1635.

SUPREME COURT OF THE UNITED STATES.

No. 78.

CHARLES A. DAVIS, PLAINTIFF IN ERROR,

VERSUS

ISAAC PACKARD, HENRY DISDIER, AND WILLIAM MORPHY.

IN ERROR TO THE COURT FOR THE CORRECTION OF ERRORS OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Assignment of errors	1a	2
Citation	1	2
Writ of error	3	3
Return on writ of error	4	3
Writ of error to supreme court of judicature	5	4
Return to same	6	4
Proceedings in the supreme court of judicature	6	5
Appearance of parties	6	5
Declaration	7	5
Defendant's 1st and 2d pleas	9	5, 6
" 3 and 4 "	10	6, 7
" 5	11	7
Plaintiffs' application to 2d plea of defendant	11	7
" " 3d & 4th " "	12	8
" " 5 " "	13	8
Issue joined	13	8
Jury sworn, and verdict for plaintiffs	14	9
Judgment on verdict	15	9
Assignment of errors	16	10
Proceedings in the court for the correction of errors	17	10
Title—appearance of parties	17	11
Judgment of supreme court of judicature affirmed	18	11
Writ of error granted, returnable to Supreme Court U. S	18	11
Case remanded to court of errors, and proceedings thereon	19	12
Judgment of court of errors on the mandate of Supreme Court U. S	20	12
Certificate of clerk	22	13

SUPREME COURT OF THE UNITED STATES:

CHARLES A. DAVIS, Plaintiff in error,
vs.
ISAAC PACKARD, HENRY DISDIER,
and WILLIAM MORPHY.
} *Assignment of Errors.*

Afterwards, that is to say, on the first Monday of August, in the year of our Lord one thousand eight hundred and thirty-three, before the Chief Justice and Associate Justices of the Supreme Court of the United States of America, at the city of Washington, comes the said Charles A. Davis, by Andrew S. Garr, his attorney, and says that, in the record and proceedings aforesaid, and also in the judgment given by the court for the correction of errors of the State of New York, quashing the writ of error to the supreme court of the said State, there is manifest error in this, to wit: that, by the record aforesaid, it appears that the said court for the correction of errors, in the month of December, in the year one thousand eight hundred and thirty, affirmed the judgment of the supreme court of the said State, with double costs; that, thereupon, a writ of error was prosecuted to the Supreme Court of the United States, and that, in the month of January, in the year one thousand eight hundred and thirty-three, the Supreme Court of the United States reversed the judgment of the said court for the correction of errors, and remanded the cause to the said court for the correction of errors, with directions to conform its judgment to the opinion of the Supreme Court of the United States, and that the said court for the correction of errors disobeyed the said directions, and gave judgment that the said writ of error to the supreme court of the said State, be quashed, with costs; whereas, by the law of the land, the said court for the correction of errors ought to have conformed its judgment to the opinion of the Supreme Court of the United States, and to have reversed the said judgment of the supreme court of the said State. Therefore, in that there is manifest error, and the said Charles A. Davis prays that the said last mentioned judgment, and also the judgment of the said court for the correction of errors, quashing the said writ of error to the supreme court of the said State, for the above and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said several judgments last mentioned, &c.

AND'W S. GARR, *Attorney, and of*
Counsel for Plaintiff in error.

By the honorable Smith Thompson, esquire, one of the justices of the Supreme Court of the United States, to Isaac Packard, Henry Disdier, and William Morphy, and their attorney or attorneys.

Whereas, Charles A. Davis, by Andrew S. Garr, his attorney, lately issued out of the circuit court of the United States for the southern district of New York, in the second circuit, a writ of error returnable to the Supreme Court of the United States, directed to the president of the senate, senators, and chancellor of the State of New York, judges of the court of the said State for the correction of errors, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court for the correction of errors, between the said Charles A. Davis, plaintiff in error, and you, the said Isaac Packard, Henry Disdier, and William Morphy, defendants in error, manifest error hath happened to the great damage of the said Charles A. Davis. And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next term of the Supreme Court of the United States at the city of Washington, in the District of Columbia, on the first Monday of August next; you are therefore hereby cited to appear before the said Supreme Court of the United States at the city of Washington, in the District of Columbia, on the said first Monday of August next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 4th day of April, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States the fifty-seventh.

SMITH THOMPSON.

Due service of a copy of this citation admitted this day, April 5, 1833.

D. D. FIELD,
Attorney for Defendant.

UNITED STATES OF AMERICA, ss.

The President of the United States of America to the President of the Senate, Senators, and Chancellor, Judges of the Court for the correction of errors of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between Charles A. Davis, plaintiff in error, and Isaac Packard, Henry Disdier, and William Morphy, defendants in error, a manifest error hath happened to the great damage of the said Charles A. Davis, as by his complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the honorable John Marshall, Chief Justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States the fifty-seventh.

FRED. J. BETTS,
Clerk of the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.
AND'W S. GARR, *Attorney.*

The answer of the judges of the court for the correction of errors in the within writ mentioned.

The record, process, and proceedings, whereof mention is within made, with all things concerning the same, are hereby certified to the Supreme

Court of the United States, as within specified, at the day and place within contained, in a certain schedule to this writ annexed, as within it is commanded.

Witness, John Tracy, esquire, president of the court for the correction of errors, at the Capitol, in the city of Albany, the sixteenth day of April, one thousand eight hundred and thirty-three.

JOHN F. BACON, *Clerk.*

STATE OF NEW YORK.

Pleas in the court for the correction of errors, held at the city hall of the city of New York, on the second day of September, in the year of our Lord one thousand eight hundred and thirty, and of our independence the fifty-fifth, before the president of the senate, senators, and chancellor of the State.

JOHN F. BACON, *Clerk.*

The people of the State of New York have sent to the justices of their supreme court of judicature, their writ close in these words, to wit:

The people of the State of New York to our justices of our supreme court of judicature, greeting:

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our said court, before you, by bill without our writ, between Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, plaintiff, and Charles A. Davis, defendant, in a plea of debt, as it is said, manifest error hath intervened to the great damage of the said Charles A. Davis, as by this complaint we are informed. We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then you cause a transcript of the record of the judgment aforesaid, and all things concerning the same, to be brought before the president of the senate, the senators and chancellor, at the next meeting of the court for the correction of errors, wheresoever the same shall be held, and this writ, that the record and proceedings aforesaid being duly inspected, we may further cause to be done what of right, and according to the law and custom of the State of New York, ought to be done. Witness, William M. Oliver, esquire, president of the senate, at the city of Albany, the twentieth day of April, in the year one thousand eight hundred and thirty.

JOHN F. BACON, *Clerk.*
[L. S.] AND'W S. GARR, *Attorney.*

And now, at this day, to wit, on the second day of September, in the year of our Lord one thousand eight hundred and thirty, by virtue of the said writ, the record and proceedings in the plaint aforesaid, with all things concerning the said judgment, are brought before the president of the senate, senators and chancellor of the State of New York, in the court for the correction of errors, at the city hall of the city of New York, in a certain schedule to the said writ annexed, according to the exigency of the said writ, and which said record and proceedings are as follows; that is to say:

SUPREME COURT:

Pleas in the supreme court of judicature of the people of the State of New York, before the justices of the same court, of the term of January, in the year of our Lord one thousand eight hundred and thirty, at the Capitol in the city of Albany.

City and county of New York, ss.

Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, put in their place David Dudley Field, their attorney, against Charles A. Davis, in a plea of debt on recognizance.

City and county of New York, ss.

Charles A. Davis puts in his place Andrew S. Garr, his attorney, at the suit of Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, of the plea aforesaid.

City and county of New York, ss.

Be it remembered, that, on the first Monday of January aforesaid, Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, came before the justices of the supreme court of judicature of the people of the State of New York, by David Dudley Field, their attorney, and brought here into the said court their bill against Charles A. Davis, being in custody, &c., of a plea of debt on recognizance, and there are pledges for the prosecution, to wit: John Doe and Richard Roe, which said bill follows in these words, to wit:

City and county of New York, ss.

Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, by David Dudley Field, their attorney, complain of Charles A. Davis, defendant in this suit, being in custody, &c., of a plea that the said defendant render unto the said plaintiffs four thousand five hundred and thirty-eight dollars and twenty cents, lawful money of the United States of America, which to the said plaintiffs the said defendant owes, and from them unjustly detains. For that, whereas, the said defendant heretofore, to wit, in August term, in the year of our Lord one thousand eight hundred and twenty-four, at the academy in Utica, came into the supreme court of judicature, of the people of the State of New York, before the justices thereof, in his proper person, and became pledge and bail for one Thomas Hill, junior, impleaded with Ralph Haskins, at the suit of the said plaintiffs, in a plea of trespass on the case, then pending in the said court, in the manner and form following; that is to say: that if it should happen that the said Thomas Hill, who was impleaded with one Ralph Haskins, should be convicted at the suit of the said plaintiffs (the said William C. Gowen, then living) in the plea aforesaid, then the said defendant consented that the damages which should be adjudged to the said plaintiffs and the said William C. Gowen, in that behalf, should be made of his goods and chattels, lands and tenements, and levied to the use of the said plaintiffs, and the said William C. Gowen, if it should happen that the said Thomas Hill, junior, should not pay to the said plaintiffs, and the said William C. Gowen, the said damages, or render himself, on that occasion, into one of the prisons of the people of the State of New York, as by the record thereof still remaining in the said court more fully appears. And the said plaintiffs say, that afterwards, to wit, in May term, in the year one thousand eight hundred and twenty-nine, to wit, at the city hall, in the city of New York, and in the court aforesaid, the said plaintiffs, by the consideration and judgment of the said court, recovered in the said plea against the said Thomas Hill, junior, and Ralph Haskins, the sum of five thousand five hundred and thirty-eight dollars and twenty cents, which, by the said court, was then and there adjudged to the said plaintiffs. And the said William C. Gowen, for the damages which they had sustained, as well by reason of the non-performance of certain promises and undertakings of the said Thomas Hill, junior, and Ralph Haskins, as for their costs and charges by them about their suit in that behalf expended; whereof, the said Thomas Hill, junior, and Ralph Haskins, were convicted, as by the record and proceedings thereof, still remaining in the said court in full force and effect, more fully appears. And the said plaintiffs, in fact, say that neither the said Thomas Hill, junior, nor the said Ralph Haskins, has yet paid to the said plaintiffs the said damages as adjudged to the said plaintiffs, and the said Gowen as aforesaid, or any part thereof, nor hath the said Thomas Hill, junior, rendered himself, on that occasion, into one of the prisons of the said people, according to the tenor and effect of the said recognizance. And the said plaintiffs, in fact, say that neither the said plaintiffs, and the said Gowen in his life time, nor the said plaintiffs since his death, have obtained any execution of the said judgment, nor sued out any execution upon the aforesaid recognizance, which the said judgment so recovered as aforesaid is still in full force, strength and effect, wholly unsatisfied, whereby an action hath accrued to the said plaintiffs to have and demand of the said defendant the said sum of money above demanded, according to the tenor and effect of the said recognizance. Nevertheless, the said defendant (although often requested, &c.,) hath not yet paid to the said plaintiffs, and the said Gowen in his life time, nor the said plaintiffs since his death, the said sum of money or any part thereof; but the same, or any part thereof, to pay the said defendant hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiffs of one hundred dollars, and thereof the said plaintiffs bring suit, &c.

And the said Charles A. Davis, defendant in this suit, by Andrew S. Garr, his attorney, comes and defends the wrong and injury, when, &c., and says that he does not owe the sum of money above demanded, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against him; and of this he puts himself upon the country, and the said plaintiffs do the like, &c. And for a further plea in this behalf the defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, &c., because, he says, that there is not any record of the said supposed recovery in the said declaration mentioned, remaining in the said supreme court of judicature of the people of the State of New York, before the justices thereof, in manner and form as the said plaintiffs have above in their said declaration alleged, and this he, the said defendant, is ready to verify: wherefore he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And for a further plea in this behalf, the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because, he says, that, at the time of the said supposed recovery in the said declaration mentioned, and long before the said William C. Gowen, one of the persons who are above supposed to have recovered in the said plea against the said Thomas Hill, junior, and Ralph Haskins, the sum of money above mentioned, was dead, and that there was not, at the time of the said supposed recovery, any such person in being as the said William C. Gowen, as in and by the aforesaid declaration is above supposed, and this he, the said defendant, is ready to verify: wherefore, he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And for a further plea in this behalf, the said defendant, by like leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that after the said judgment, as in the said declaration mentioned, and before the exhibiting of the bill of the said plaintiffs against him, the said defendant in this behalf, there was no writ of capias ad satisfaciendum duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs, upon the said judgment, and duly returned in the said court, as according to law and the custom and practice of the said court from time immemorial, used and approved in the said court before the commencement of this suit, there ought to have been; and that he, the said defendant, is ready to verify: wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And for a further plea in this behalf, the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that after the recovery of the said judgment in the said declaration, and before the return of any writ of capias ad satisfaciendum thereupon duly sued or prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs, upon the said judgment, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and twenty-nine, he, the said Thomas Hill, junior, died, to wit, at Gibraltar, in Spain, that is to say, at the city of New York, at the first ward of the said city, and in the county of New York, and this he, the said defendant, is ready to verify: wherefore, he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And the said plaintiffs, as to the plea of the said defendants by him secondly above pleaded, say that they, by reason of any thing in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because they say that there is a record of the said recovery in the said declaration mentioned remaining in the said supreme court of judicature of the people of the State of New York, before the justices thereof, as the said plaintiffs have above in their said declaration alleged; and this the said plaintiffs are ready to verify by the said record, when, where, and in such manner as the court here shall direct, and they pray that the said record may be seen and inspected by the court; and because the said court are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before the justices aforesaid, until the first Monday of May next, to hear judgment thereupon, for that the said court here are not yet advised thereof, &c.

And the said plaintiffs, as to the plea of the said defendant by him thirdly above pleaded, say that they, by reason of any thing in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because, they say that, at the time of the said recovery in the said declaration mentioned, the said William C. Gowen, one of the persons who recovered in the said plea against the said Thomas Hill, junior, and Ralph Haskins, the sum of money above mentioned, was not dead, and that there was, at the time of the said recovery, such a person in being as the said William C. Gowen, and this the said plaintiffs pray may be inquired of by the country, and the said defendants doth the like, &c

And the said plaintiffs, as to the plea of the said defendant by him fourthly above pleaded, say that they, by reason of any thing in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because, they say that, after the recovery of the said judgment as in the said declaration mentioned, and before the exhibiting of the bill of the said plaintiffs against the said defendant in this behalf, there was a writ of capias ad satisfaciendum duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs upon the said judgment, and duly returned into the said court, as, according to law and the custom and practice of the said court from time immemorial, used and approved in the said court before the commencement of this suit, there ought to have been, and this the said plaintiffs pray may be inquired of by the country, and the said defendant doth the like, &c.

And the said plaintiffs, as to the plea of the said defendant by him fifthly above pleaded, say that they, by reason of any thing in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because they say that, after the recovery of the said judgment, and before the return of the writ of capias ad satisfaciendum thereupon duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs upon the said judgment, the said Thomas Hill, junior, did not die in manner and form as the said defendant hath above in the said plea in that behalf alleged; and that the said plaintiffs pray may be inquired of by the country, and the said defendant doth the like, &c.

Therefore, the issues above joined to be tried by the country are ordered by the said supreme court to be tried at the circuit court appointed to be held at the city hall of the city of New York, in and for the said city and county of New York, on the second Monday of March next.

And now, at this day, to wit, on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty, before the justices of the supreme court of judicature aforesaid, at the place last aforesaid, come the said Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, by David Dudley Field, their attorney aforesaid, and the said Charles A. Davis, by Andrew S. Garr, his attorney aforesaid, and the record aforesaid being seen and inspected by the court here, it sufficiently appears to the same court that there is a record of the said recovery in the said declaration mentioned, remaining in the said supreme court of judicature of the people of the State of New York, before the justices thereof, as the said plaintiffs have above in their said declaration alleged; and the said circuit judge of the first circuit, before whom the said issues were tried, hath sent hither his record, had before him in these words, to wit:

Afterwards, that is to say, on the day and at the place last within mentioned, before the honorable Ogden Edwards, circuit judge of the first circuit, come the parties within mentioned by their attorneys within mentioned, and the jurors of the jury within mentioned being summoned, also come, who, to speak the truth of the matters within contained as within required, being chosen, tried, and sworn, say, upon their oaths as to the issue first within joined, that the defendant does owe the sum of money within demanded, in manner and form as the said plaintiffs have within thereof complained against him.

And as to the issue thirdly within joined, that at the time of the said recovery in the said declaration mentioned, the said William C. Gowen, one of the persons who in the said plea against the said Thomas Hill, junior, and Ralph Haskins, the sum of money above mentioned, was not dead.

And as to the fourth issue within joined, that after the recovery of the said judgment as in the said declaration mentioned, and before the exhibiting of the bill of the said plaintiffs against the said defendant in this behalf, there was a writ of capias ad satisfaciendum duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs, upon the said judgment, and duly returned in the said court as, according to law and the custom and practice of the said court from time immemorial, used and approved of in the said court before the commencement of this suit, there ought to have been.

And as to the fifth issue within joined, that, after the recovery of the said judgment and before the return of the writ of capias ad satisfaciendum thereupon duly sued and prosecuted out of the said court of the said people, before the justices thereof, against the said Thomas Hill, junior, at the suit of the said plaintiffs upon the said judgment, the said Thomas Hill, junior, did not die in the manner and form as the said defendant hath within in the said plea in that behalf alleged.

And they assess the damages of the said plaintiffs by reason of the detaining of the within debt, over and above their costs and charges by them about their suit in this behalf expended, to six cents, and for those costs and charges to six cents.

Therefore, it is considered that the said Isaac Packard, Henry Disdier, and William Morphy, survivors of William C. Gowen, deceased, do recover against the said Charles A. Davis, their said debt, and also their damages aforesaid, to twelve cents by the said jury in form aforesaid assessed, and also for their said costs and charges by the court now here adjudged of increase to the said Isaac, Henry, and William, and, with their assent, to four hundred and sixty-eight dollars and ninety one cents, which said damages, costs, and charges, in the whole amount to four hundred and sixty-nine dollars and nine cents. And the said Charles A. Davis in mercy, &c.

(Endorsed.)

Judgment signed this 31st day of May, A. D. 1830.

JNO. T. IRVING.

SUPREME COURT:

ISAAC PACKARD, HENRY DISDIER,
WILLIAM MORPHY, Survivors of
WILLIAM C. GOWEN, deceased, } *Judgment Record.*
vs.
CHARLES A. DAVIS.

D. D. FIELD,
Plaintiffs' Attorney.

Filed, May 31, 1830, 1 o'clock.
(A copy) JAS. FAIRLIE, *Clerk.*

And hereupon, come into court here at the said city hall of the city of New York, as well the said Charles A. Davis, by Andrew S. Garr, his attorney, as the said Isaac Packard, Henry Disdier, and William Morphy, by Daniel Dudley Field, their attorney, and the said Charles A. Davis says that, in the record and proceedings aforesaid, and also in the giving the judgment aforesaid, there is manifest error in this, to wit, that he, the said Charles A. Davis, before and at the time of the commencement of the suit of the said Isaac Packard, Henry Disdier, and William Morphy, against him, the said Charles A. Davis, was and ever since hath continued to be, and yet is, Consul General of his Majesty the King of Saxony, in the United States, duly admitted and approved as such by the President of the United States; that, being such, he ought not, according to the constitution and laws of the United States, to have been impleaded in the said Supreme Court, but in the district court of the United States for the southern district of New York, or in some other district court of the said United States, and that the said Supreme Court had not jurisdiction, and ought not to have taken to itself the cognizance of the said cause. Therefore, in that there is manifest error, and this he, the said Charles A Davis, is ready to verify: wherefore, he prays that the judgment aforesaid for the error aforesaid may be revoked, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the judgment aforesaid.

And hereupon the said Isaac Packard, Henry Disdier, and William Morphy, say that there is no error in the record and proceedings aforesaid, nor in the giving of the judgment aforesaid, because, they say, that it no where appears by the said record, proceeding, or judgment, that the said Charles A. Davis ever was Consul of the King of Saxony, and they pray that the said court for the correction of errors may proceed to examine the record and proceedings aforesaid, and the matters aforesaid above assigned for error, and that the judgment aforesaid may be in all things affirmed.

But because the court aforesaid is not yet advised what judgment to give of and concerning the premises, a day therefore is given here to the said parties till the twenty-eighth day of December next, before the president of the senate, the senators, and chancellor of the State, at the capitol, in the city of Albany, to hear the judgment aforesaid, for that the said court for the correction of errors, now here, is not advised thereof, &c.

Pleas in the court for the correction of errors, held at the capital in the City of Albany, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and thirty, and of our independence the fifty-fifth, before the president of the senate, the senators, and chancellor of the State.

JOHN F. BACON, *Clerk.*

At which day, came here into the said court for the correction of errors, at the capitol, in the city of Albany, as well the said Charles A. Davis as the said Isaac Packard, Henry Disdier, and William Morphy, by their respective attorneys aforesaid: whereupon, the said court for the correction of errors, after having heard the counsel for both parties, and diligently examined and fully understood the causes assigned for error, and inspected the record and process aforesaid, did order and adjudge that the judgment of the Supreme Court be in all things affirmed. That the plaintiff take nothing by his writ, and that the defendants go without day; that the defendants in error recover against the plaintiff in error their double costs in defending the writ of error in this cause to be taxed, and also interest on the amount recovered by way of damages, and that the record be remitted, &c.

Therefore, it is considered by the said court for the correction of errors, that the judgment of the Supreme Court aforesaid be, and the same is hereby in all things affirmed. It is further considered that the said defendants in error recover against the plaintiff in error their double costs, according to the statute in such case made and provided, to be taxed in defending the writ of error in this cause, and also interest on the amount recovered by way of damages; and that the record aforesaid, as also the proceedings aforesaid in this same court for the correction of errors in the premises had, be to the said Supreme Court wheresoever the same may be held, remitted, &c.

And thereupon, a writ of error was prosecuted by the said Charles A. Davis out of the circuit court of the United States for the southern district of New York, in the second circuit, returnable to the Supreme Court of the United States, in this cause close in these words, to wit:

UNITED STATES OF AMERICA, ss.

The President of the United States of America to the president of the senate, senators, and chancellor of the State of New York, judges of the court for the correction of errors of the said State, greeting:

Because in the record and proceedings, as also in the rendition of the jugdment of a plea which is in the said court before you, or some of you, between Charles A. Davis, plaintiff in error, and Isaac Packard, Henry Disdier, and William Morphy, defendants in error, manifest error hath happened to the great damage of the said Charles A. Davis, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, you distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness, the honorable John Marshall, esquire, Chief Justice of the Supreme Court of the United States, this first Monday of August, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States the fifty-fifth.

FRED. J. BETTS, [L. S.]
Clerk of the Southern District of New York.
ANDREW S. GARR, *Attorney.*

And, thereupon, the said president of the senate of the State of New York, the senators, chancellor, and justices of the supreme court of the said State, being the judges of the court for the correction of errors holden in and for the said State of New York, without delay, the record, process and proceedings of the plaint aforesaid, with all things concerning the same, distinctly and openly, did send to the Supreme Court of the United States, as by the said last mentioned writ they were commanded. And such proceedings were thereupon had in the said Supreme Court of the United States, that afterwards, to wit, in the term of January, in the year of our Lord one thousand eight hundred and thirty-three, the said Supreme Court of the United States did adjudge and declare it to be the opinion of the said court that the said Charles A. Davis, being Consul General of the King of Saxony, exempted him from being sued in the State court, and that, by reason thereof, the judgment rendered by the court for the correction of errors was erroneous: Therefore, it was considered, ordered, and adjudged by the said Supreme Court of the United States of America, that the judgment of the said court for the correction of errors should be, and the same was reversed; and that this cause should be remanded to the said court for the correction of errors, with directions to conform its judgment to the opinion of the said Supreme Court of the United States of America: and the record and proceedings aforesaid were thereupon remitted from the said Supreme Court of the United States of America to the said court for the correction of errors of the State of New York, held at the capitol, in the city of Albany, on the first day of April, in the said year of our Lord one thousand eight hundred and thirty-three, in order that such further proceedings might be had in this cause, as according to right and justice, and in conformity to the opinion and judgment of the Supreme Court of the United States, and the laws of the United States, ought to be had, the said last mentioned writ of error notwithstanding.

At which day, in this said court for the correction of errors, came as well the said Charles A. Davis as the said Isaac Packard, Henry Disdier, and William Morphy, by their respective attorneys aforesaid; and the said court for the correction of errors now here, having heard the counsel for both parties, and diligently examined and fully understood all and singular the premises, and inspected as well the record and proceedings aforesaid as the mandate of the said Supreme Court of the United States: it is thereupon declared and adjudged by this court, that a Consul General of the King of Saxony is, by the constitution and law of the United States, exempt from being sued in a State court. It is further adjudged and declared that the supreme court of the State of New York is a court of general common law jurisdiction, and that, by the laws of this State, this court has no jurisdiction, power, or authority, to reverse a decision of the said supreme court for any error in fact, or any other error than such as appears upon the face of the record and proceedings of the said Supreme Court, and that no other errors can be assigned or regarded as a ground of reversal of judgment of the said Supreme Court than such as appears upon the record and proceedings of the said Supreme Court, and which relate to questions which have actually been brought before the justices of that court for their decision thereon, by a plea to the jurisdiction of that court or otherwise; and that this court was not authorized to notice the allegations of the said Charles A. Davis, assigned for error in this court, that he was Consul General of the King of Saxony, or to try the truth of the said allegation, or to regard the said allegation as true; and that, by the laws of this State, the replication of the defendant to an assignment of errors, that there is no error in the record and proceedings aforesaid, or in the giving of the judgment of the Supreme Court, was not an admission of the truth of any matter assigned as error in fact, or which was not properly assignable for error in this court; and that if there was no error upon the face of the record and the proceedings in the Supreme Court, the defendant in error was entitled to a judgment of affirmance according to the laws of this State, any matter assigned for error in fact, to the contrary notwithstanding. And it is further declared and adjudged that, by the laws of this State, if there is any error in a judgment of the said Supreme Court, or in the proceedings which is properly assignable for error in fact, the party aggrieved by such error may sue out a writ of error, *coram vobis*, returnable in the said Supreme Court, upon which the plaintiff in error may assign errors in fact. And if such errors in fact are admitted, or are found to be true by the verdict of a jury upon an issue joined thereon, the said Supreme Court may revoke their said judgment; and that, for any error in the judgment of the said Supreme Court upon the said writ of error *coram vobis*, this court has jurisdiction and authority upon a writ of error to the said Supreme Court to review the said last mentioned judgment, and to give such judgment in the premises as the said Supreme Court ought to have given. It is therefore the opinion of this court that, although the said Charles A. Davis, the plaintiff in error in this cause, might have been the Consul General of the King of Saxony, and as such was not liable to be sued in the State court, yet inasmuch as the fact that he was such consul no where appeared in the record of the judgment of the said Supreme Court, the defendant in error is entitled to the judgment of this court, affirming the said judgment of the said Supreme Court. But the defendant in error having, upon the filing of the said mandate of the said Supreme Court of the United States, applied to this court to dismiss the writ of error to the said supreme court of this State, it is therefore ordered and adjudged that the said last mentioned writ of error be quashed: and it is further ordered and adjudged that the said defendants in error recover against the plaintiff in error their costs in this court, according to the statute in such case made and provided, to be taxed, and also interest on the amount of the judgment of the court below, by way of damages; and that the proceedings be remitted to the said supreme court of this State, &c.

Judgment signed this 25th day of April, 1833.

JACOB SUTHERLAND.

I certify the preceding to be a true copy of the original record remaining on file in the clerk's office of the court for the correction of errors in the city of Albany.

[L. S.] JOHN F. BACON, *Clerk.*

1669.

SUPREME COURT OF THE UNITED STATES.

No. 73.

WILLIAM YEATON ET AL., APPELLANTS,

VERSUS

DAVID LENOX ET AL.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE COUNTY OF ALEXANDRIA, DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Citation	1a	2
Title	1	2
Bill	2	3
Subpœna	8	6
Return	9	7
Appearance of J. Davidson, on behalf of the Trustees of the United States' Bank, and discharge of attachment against R. M. Scott	9	7
Order of publication against absent defendants	9	7
Reference to Master Commissioner	10	8
Answer of James Davidson	11	8
Report of Master Commissioner	13	9
General dedimusses awarded to take depositions	16	11
Leave given complainants to make J. Davidson a party, and to amend their bill	16	12
Amended bill	17	12
Subpœna vs. Davidson to answer amended bill	20	13
Amended bill taken for confessed, and cause set for decree	20	14
Suit abated as to Young, Ladd, Tucker, and Marsteller, by their deaths	21	14
Order taking amended bill for confessed set aside, and answer of J. Davidson to amended bill filed	21	14
Complainants' bill dismissed with costs	21	14
Agreement	21	14
Appeal granted	21	14
Answer of Davidson to amended bill	22	14
Order of Supreme Court United States dismissing appeal filed	24	16
Exhibits—Correspondence between the Chairman of Marine Insurance Association and the President of the U. S. Branch Bank, from No. 1 to No. 7, inclusive	25	16

Note—Note....32......21
Policy of insurance on Gov. Strong....33......21
List of notes deposited May 30, 1805, in Branch Bank....37......23
Ditto do. Jan. 22, 1806, do....37......24
Order of J. Tucker, Chairman &c., for notes and receipts of L. Deblois therefor....38......24
Depositions—First deposition of L. Deblois....38......24
Second do. do....42......26
Clerk's certificate....46......28

District of Columbia, to wit:

To David Lenox, Elias Boudinot, Robert Smith, James C. Fisher, Joseph Sims, Archibald McCall, Paschall Hollingsworth, John Stelle, Thomas M. Willing, Horace Binney, George Harrison, Abijah Hammond, William Bayard, and Oliver Wolcott, John Roberts, Richard M. Scott, trustee of Elisha Janney, and Elizabeth Wilson, and Robert I. Taylor, administratrix, and administrator of James Wilson and James Davidson, greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, now holden at the city of Washington, being the present seat of the National Government, and which commenced its session on the second Monday in January last, to show cause, if any there be, why the decree of the United States' Circuit Court of the District of Columbia for the county of Alexandria, in the case of William Yeaton and others against David Lenox and others, should not be corrected, and why speedy justice should not be done to the parties in that behalf. Witness the honorable John Marshall, Chief Justice of the United States, this 9th day of March, 1832.

W. CRANCH.

Service: by leaving a copy with James Davidson, 13th March, 1832.

H. ASHTON,
Marshal.

District of Columbia, sct.

Pleas before the honorable the Judges of the United States' Circuit Court of the District of Columbia for the county of Alexandria, at the court-house, in the town of Alexandria:

In Chancery.

Title. William Yeaton, Robert Young, John G. Ladd, John Tucker, Philip G. Marsteller, Cuthbert Powell, Richard Veitch & Company, Nathaniel Wattles & Company, Thomas Vowell, junior, and Ferdinand Marsteller, complainants,

against

David Lenox, Elias Boudinot, Robert Smith, James C. Fisher, Joseph Sims, Archibald McCall, Paul Leimen, Samuel Coates, Henry Pratt, George Fox, Paschall Hollingsworth, John Stelle, Thomas M. Willing, Horace Binney, George Harrison, Abijah Hammond, William Bayard, and Oliver Wolcott, John Roberts, Richard M. Scott, trustee of Elisha Janney, and Elizabeth Wilson, and Robert I Taylor, administratrix and administrator of James Wilson, deceased, defendants.

Be it remembered that, heretofore, to wit, on the 23d day of July, 1813, came the complainants aforesaid, by Thomas Swann, esquire, their solicitor, and filed in the clerk's office of the said court a certain bill against the said defendants; which is in the words and figures following, to wit:

To the honorable the Circuit Court of the United States for the county of Alexandria:

Bill.

Humbly complaining, your orators, William Yeaton, Thomas Vowell, junior, William Brent, Augustine Newton, and David Ricketts, administrators of William Newton, deceased, executors of John G. Ladd, deceased, and Benjamin Shreve, show unto your honors, that your orators, with sundry other persons, entered into an association in the town of Alexandria, sometime previous to the year 1805, for the purpose of making insurances upon vessels and cargoes against sea and other usual marine risks; which association was denominated the Marine Insurance Association of Alexandria. That, while this association continued, that is to say, about the 26th day of June, 1804, James Wilson, of the town of Alexandria, now deceased, made an application to the said association for insurance upon a ship called the Governor Strong, on a voyage from Norfolk to Liverpool; and the said association agreed to make the said insurance to the amount of ten thousand dollars; and your orators separately subscribed the said policy for the sums respectively affixed to their names, as will more fully appear by a copy of the said policy of insurance herewith exhibited, and prayed to be taken as a part of this bill of complaint.

Your orators say, that, at the time the said insurance was made, the said ship Governor Strong was represented to be the property of the said James Wilson, but your orators afterwards understood that Alexander Henderson & Co., who had previously owned the said ship, had given a lien upon her in favor of the Branch Bank of the United States, held at Washington, to secure to the said bank a debt due from the said Alexander Henderson & Co. to the said bank, or had transferred the said ship to the said James Wilson to indemnify the said Wilson from any injury he might sustain in consequence of his having become endorser for the said Alexander Henderson & Co. to the said bank. Your orators never saw the said transfer, nor do they know the precise terms of it; but they are well satisfied that the interest which the said James Wilson held in the said ship was for the benefit of the said Branch Bank, and was so understood by the said bank and the said James Wilson.

Your orators further show, that, some time after the said insurance had been effected, the said James Wilson informed the said Marine Insurance Association that the Governor Strong had sustained considerable injury in the progress of the voyage insured; and he claimed from the said association a considerable sum of money for the partial loss sustained in the said voyage; and he represented to the said association that the money to be paid belonged to the Bank of the United States, and that he wished to pay the same to the said bank. Your orators show that the said association was not satisfied with the evidence produced by the said James Wilson to prove the said loss; but, willing to accommodate him in his wishes, your orators agreed to furnish their promissory notes to him, to be passed by him to the said Branch Bank of the United States, but, upon the express condition that, if it should afterwards appear that they were not liable for the said partial loss, that then the money should be returned to them by the said bank. This the said Wilson readily agreed to, and the same was communicated to the bank, and was agreed to, as your orators always understood, by them. Your orators say, that, in pursuance of this understanding, they passed to the said James Wilson their several promissory notes bearing date about the 29th of May, 1805, and for the sums following, viz. the note of your orator, Robert Young, for the sum of \$166 67; of your orator, William Yeaton, for \$233 33; of your orator, Thomas Vowell, junior. for \$266 67; of your orator, William Brent, for \$133 33; of your orator's intestate, William Newton, for \$200; of your orator's testator, John G. Ladd, for \$133 33; and of your orator, Benjamin Shreve, for \$133 33; making altogether the sum of \$1266 66. These notes were passed over to the said bank; and, when they became due, were paid by your orators to the said bank. Your orators have understood that the money, when received by the said bank, was not carried absolutely to the credit of the said Alexander Henderson & Co., but was held subject to the condition aforesaid, and only to be considered a payment in case your said orators should be finally liable to the payment of the same.

Your orators further show, that, upon further inquiry in regard to the said loss, they were satisfied that they were not liable to the payment of the same, and they determined to resist the said payment; but, before any suits were ever instituted to recover the same, James Wilson had departed this life, and his administrators were not inclined to take upon themselves the trouble or expense of the said suits; in consequence of which the said Branch Bank of the United States directed suits to be brought in the name of the said administrators, for their use, against your said orators, and the other members who had embarked in the said insurance; and the said suits were prosecuted and maintained at the expense of the said bank, and were finally decided in favor of your orators, as by reference to the records of this honorable court will more fully appear, and to which your orators, for greater certainty, refer. When this decision took place, your orators considered themselves entitled to the money which they had conditionally advanced as aforesaid to the said branch bank; and they claimed the same of the said bank, but they declined paying the same to your orators, stating that they had received the same as an absolute payment from the said James, and not upon the condition stated by your orators as aforesaid.

Your orators beg leave to state, that, before the suits were instituted against them as aforesaid, a correspondence took place between John Tucker, chairman of the said Marine Association, in behalf of your orators, and John P. Nan Vess, esq., president of of the said Branch Bank at Washington; which said correspondence is herewith exhibited, marked No. 1, 2, 2, 4, 5, 6, and 7, and which your orators pray may be made a part of this bill of complaint. Your orators beg leave particularly to refer to the letter of the said John P. Van Ness, marked No. 4, by which it will appear that the bank aforesaid did agree that, in case the award should be made in their favor, that the money which had been actually paid into the bank on account of the policy should be considered as a payment towards the said loss. Your orators do insist that this letter contains an acknowledgment that some money was paid into the said bank on account of the said policy, and that the same was not paid on account of James Wilson; and, if so, it follows that the payment was conditionally made, as stated by your orators, and your orators do charge that the same was so made; and they had reason to hope that the said bank would have returned to them the said moneys as soon as it was ascertained that your orators were not liable to the payment of the same; but in this hope your orators were disappointed, and your orators have now no prospect of obtaining the same but by resort to a court of justice.

Your orators say, that the charter of the Bank of the United States hath expired, and the said bank is no longer a body corporate; but, before the dissolution of the said bank, they duly transferred and made over to David Lenox, Elias Boudinot, Robert Smith, James C. Fisher, Joseph Sims, Archibald McCall, Paul Lieman, Samuel Coates, Henry Pratt, George Fox, Paschall Hollingsworth, John Stelle, Thomas M. Willing, Horace Binney, George Harrison, Abijah Hammond, William Bayard, and Oliver Matlock, whom your orators pray may be made defendants to this bill of complaint, all their right and interest in the moneys, debts, and effects belonging to the said bank, chargeable, however, with the payment of the debts due from the said bank, as by reference to the deeds of transfer, copies of which are herewith exhibited, will more fully and at large appear.

Your orators say, that the said defendants are not inhabitants of the District of Columbia, but reside out of the said District, but in the United States. Your orators are informed that there are large sums of money due to the said defendants, as trustees for the Bank of the United States aforesaid, from several persons in the town of Alexandria, that is to say, from John Roberts and Richard M. Scott, trustee of Elisha Janney, both of whom your orators pray may be made defendants to this bill of complaint. Your orators also say, that they are informed and believe that Elizabeth Wilson and Robert I. Taylor, administrators of the said James Wilson, deceased, and who they pray may also be made defendants to this bill of complaint, have in their possession some moneys belonging to the estate of the said James Wilson, subject to the aforesaid claim of your said orators; but they do not consider themselves authorized to apply the same without the interposition of this honorable court.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises by the strict rules of the common law, and cannot subject the moneys and effects of the said defendants, as trustees aforesaid, in the hands of the other defendants, or subject the money in the hands of the defendant Taylor to the payment of your orators' said claim, but by the interposition of this honorable court, where matters of this nature are properly cognizable; to the end, therefore, that the said defendants may true and perfect answer make to all and singular the premises as fully and particularly as if the same were herein again repeated and interrogated; and that the said defendants may be compelled to produce such of the books and papers of the said branch bank as may have relation to the payments made by your orators as aforesaid; and that this court my decree that the said defendants shall pay to your orators the moneys so advanced by your orators to the said bank as aforesaid, with such interest thereon as shall appear to be just; and that this court may make such other order and decree in the premises as to them shall seem consistent with equity and good conscience; may it please the court to grant to your orators the United States' most gracious writ of subpœna, &c.

SWANN, *for the Complainants.*

Whereupon, the following subpœna, with the memorandum thereon endorsed, did issue, to wit:

DISTRICT OF COLUMBIA, to wit:

Subpœna. [L. S.] *The United States of America to the Marshal of the District of Columbia,* greeting:

You are hereby commanded to summon David Lenox, Elias Boudinot, Robert Smith, James C. Fisher, Joseph Sims, Archibald McCall, Paul Leimen, Samuel Coates, Henry Pratt, George Fox, Paschall Hollingsworth, John Stelle, Thomas M Willing, Horace Binney, George Harrison, Abijah Hammond, William Bayard, and Oliver Wolcott, and John Roberts, and Richard M. Scott, trustee of Elisha Janney, and Elizabeth Wilson, and Robert I Taylor, administratrix and administrator of James Wilson, deceased, to appear before the judges of the circuit court of the District of Columbia for the county of Alexandria, at the courthouse of the said county, at the next court, to answer a bill in chancery, exhibited against them by William Yeaton, Robert Young, John G. Ladd, John Tucker, Philip G. Marsteller, Cuthbert Powell, Richard Veitch & Company, Nathaniel Wattles & Company, Thomas Vowell, junior, and Ferdinand Marsteller; and this they shall in no wise omit, under the penalty of three hundred and thirty-three dollars and thirty three cents: and have then there this writ. Witness the honorable William Cranch, Chief Judge of our said court, this twenty-third day of July, eighteen hundred and thirteen.

G. DENEALE, *Clk.*

Memorandum. The object of the bill, this day filed in this case, is to attach the debts and effects of the late Bank of the United States in the hands of the defendants, Roberts and Scott, to satisfy the claim in the bill mentioned, due from the said bank *to* the United States.

Teste:

G. DENEALE, *Clk.*

Return.

Upon which subpœna, the marshal made the following return, to wit:

Executed on John Roberts, Robert I. Taylor, and service acknowledged as to E Wilson; and also executed on Richard M. Scott, the other defendants not found.

D. MINOR, *D. M.*,
For W. BOYD, *Marshal.*

Bill taken for confessed and set for decree.

At another day, to wit, at the rules held in the clerk's office of the said court for the month of October, 1816, (until which time this cause had been regularly continued,) came the complainants, by their solicitor; and, on their motion, their bill is taken for confessed, and set for decree.

Appearance of J. Davidson, and discharge of attachment v. Scott.

And at another day, to wit, at a court continued and held for the county aforesaid, the 23d day of April, 1818, (this cause having been continued at the two preceding terms,) James Davidson came into court, and undertook to perform any decree which the court may make against the late Bank of the United States; and thereupon the attachment against Richard M. Scott is discharged.

Order of publication.

And at another day, to wit, at a court continued and held for the county aforesaid, the 16th day of May, 1818, the defendants, David Lenox, Elias Boudinot, Robert Smith, James C. Fisher, Joseph Sims, Archibald McCall, Paul Leimen, Samuel Coates, Henry Pratt, George Fox, Paschall Hollingsworth, John Stelle, Thomas M. Willing, Horace Binney, George Harrison, Abijah Hammond, William Bayard, and Oliver Wolcott, not having entered their appearance, and given security according to the statute and the rules of this court; and it appearing to the satisfaction of the court, upon affidavit, that the said defendants are not inhabitants of this District, on motion of the said complainants, by their counsel, it is ordered that the said absent defendants do appear here on the first day of the next term, and enter their appearance to the suit, and give security for performing the decrees of the court; and that the other defendants, John Roberts and Richard M. Scott, do not pay away, convey, or secrete, the debts by them owing to, or the estate or effects in their hands belonging to, the late Bank of the United States, until the further order or decree of this court; and that a copy of this order be forthwith published for two months successively in one of the public newspapers published in this county, and that another copy be posted at the front door of the court-house of said county.

Referred to Master Commissioner.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 18th day of December, 1818, in this cause it was decreed and ordered, that Master Commissioner Auld do ascertain and state the amount of moneys received by the late Branch Bank of the United States at Washington from James Wilson, deceased, upon notes passed to the said James Wilson on account of insurance upon the ship called Governor Strong; as, also, any moneys paid by the said Robert I. Taylor, administrator of the said James Wilson, deceased, to the said bank on account of the insurance of the said ship; and report the same to this court.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 13th day of May, 1819, this suit was continued; and at a court continued and held for the said District and county, the 21st day of December, 1819, this suit was continued.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 29th day of May, 1820, the answer of James Davidson was filed; which is, by consent, received on behalf of David Lenox and others, president, directors, and stockholders of the late Bank of the United States; and general replication and issue: which answer is in the words and figures following, to wit:

William Yeaton & Others, Complainants,
against
David Lenox & Others, Defendants.
} *In Chancery.*

Answer of James Davidson.

Answer to said bill by James Davidson.

The Bank of the United States received, in January, 1806, sundry promissory notes from James Wilson, amounting to $2,134 04; which, when paid, were to be placed to the credit of Alexander Henderson & Co. on account of a loss by the underwriters. He believes there was some understanding at the time that, inasmuch as the loss or liability on account of the underwriters was uncertain, in case it should ultimately prove that they were not liable, that the notes, if not paid, should be returned; or, if paid, that the money paid for them should be refunded. He denies, positively, that any of the said notes were ever paid to the said bank; and the whole of said notes were delivered, on the 2d day of April, 1806, to Lewis Deblois, according to the order of John Tucker, the complainant, dated on the first day of that month. He admits that some notes were deposited on the 30th May, 1805, and payable on the 28th July, 1805, by James Wilson, to go, when paid, to the credit of Alexander Henderson & Co.; and that $1271 66 of said notes were received, and accordingly credited; but he has no recollection of any condition respecting these notes, such as the complainant states with respect to the notes received in January, 1806. But he denies that any other or further sum was paid by said Wilson, or by his administrator, to the credit of Alexander Henderson & Co.; nothing further appearing on the books of said bank. Further he saith not.

JAMES DAVIDSON,
On behalf of D. Lenox and others, lately President, and stockholders of the Bank of the U. States.

DISTRICT OF COLUMBIA,
County of Washington, } to wit:

On this 27th day of May, 1820, James Davidson personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, and made oath, on the Holy Evangelists of Almighty God, that the answer and statement above subscribed by him are true, as far as they are within his own knowledge; and that part, stated from the books of the late Bank of the United States and papers in his possession, he believes true. Sworn before

JOSEPH FORREST.

And at a court continued and held for the District and county aforesaid, the 31st day of May, 1820, this cause was continued.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the first day of December, 1820, Master Commissioner Auld returned his report; which was ordered to be filed, and is in the words and figures following:

ALEXANDRIA COUNTY COURT:

WILLIAM YEATON AND OTHERS, Complainants,
against
DAVID LENOX AND OTHERS, Defendants. } *In Chancery.*

Report of Master Commissioner.

In this case, it is decreed and ordered, that Master Commissioner Auld do ascertain and state the amount of moneys received by the late Bank of the United States at Washington, from James Wilson, deceased, upon notes passed to the said James Wilson on account of insurance upon the ship, called Governor Strong; as, also, any moneys paid by Robert I. Taylor, administrator of the said James Wilson, deceased, to the said bank on account of the insurance of the said ship, and report the same to this court.

A copy. Teste:

EDM. I. LEE, *C. C.*

COMMISSIONER'S OFFICE,
Alexandria, April 4, 1820.

The parties in the cause before mentioned, will please take notice, that, on Thursday, the 13th instant, at 10 o'clock in the forenoon, at my office in this place, I shall proceed to carry into effect the foregoing order; at which time and place they are required to attend with their statements and vouchers.

COLIN AULD, *M. C.*

A copy to be served on James Davidson, cashier of the late Branch Bank at Washington, who has in custody the books of that branch.

C. AULD, *M. C.*

A copy delivered, 7th April, to James Davidson, by John Bright, per his affidavit made before me.

C. AULD, *M. C.*

Postponed, by desire of Mr. Davidson, till the 24th instant.

AUGUST 10, 1820.

In order to enable the Commissioner to carry into effect the decree of the court, it will be requisite for Mr. James Davidson, (who has answered the bill on behalf of the defendants,) to designate the particular notes which were deposited on the 30th day of May, 1805; and, also, such of them as were paid and placed to the credit of Alexander Henderson and Company, and which amounted, in the aggregate, to the sum of $1271 and 66 cents, as stated in his said answer.

The complainants, in their bill, set forth specially that William Yeaton paid his note for $236 93; John G. Ladd for $135 47; Robert Young for $169 25; John Tucker for $169 25; Philip G. Marsteller for $101 55; Cuthbert Powell for $169 25; Richard Veitch & Company for $101 55; Nathaniel Wattles & Company for $169 27; Thomas Vowell, jr., for $270 80; and Marsteller & Young for $610 72. Mr. Davidson will, therefore, please state, as may appear from the bank books, which of these notes were deposited—which of them were actually collected—and to whom those uncollected were delivered, or what has become of them.

COLIN AULD, *M. C.*

Served, 19th September, 1820, on James Davidson, per affidavit of Joshua Harper filed.

OCTOBER 27, 1820.

To the honorable the Circuit Court of the United States, sitting in the county of Alexandria, in Chancery.

May it please your honors, pursuant to the order of your honorable court, a copy of which is hereunto prefixed, I appointed a day for carrying it into effect: but, at the desire of James Davidson, late cashier of the former Branch Bank of the United States at Washington, who appeared on behalf of the defendants, the business was postponed, from time to time, until this day, with consent of all parties.

It appears that, on the 29th day of May, 1805, the complainants gave their notes to James Wilson, payable 60 days after date, and received from him his notes in lieu thereof, payable in 5 months, including the difference of interest. That the notes issued to James Wilson, as aforesaid, were, in part, deposited on the 30th May, 1805, in the late Branch Bank of the United States at Washington; and that the following were paid on the 31st day of July, 1805, when due to the said bank, viz.

Robert Young's for - - - - - -	$166 67,
William Yeaton's for - - - - -	233 33,
Thomas Vowell, junior's, for - - - -	266 67,
John G. Ladd's for - - - - -	133 33,
making together - - - -	$800 00;

and which makes a part of the sum of $1271 66, stated in the answer of Mr. Davidson to have been received and passed to the credit of Alexander Henderson & Company.

It does not appear that any payment was ever made by the administrators of James Wilson, deceased, to the said bank on the account specified in the order; but it appears probable that the difference between the above sum of $800, and the sum carried to the credit of Alexander Henderson & Company, was received from Mr. Wilson for the same object. The documents A and B, herewith filed, and produced by Mr. Davidson, are referred to as connected with this case.

I find, accordingly, that the sum of $800 "has been received by the late Bank of the United States at Washington from James Wilson, deceased, upon notes passed to the said James Wilson on account of insurance upon the ship called Governor Strong," and paid to it on the 31st day of July, 1805, and passed to the credit of Alexander Henderson & Company by the said bank.

All which is humbly certified and submitted.

COLIN AULD, *M. C.*

And at a court continued and held for the District and county aforesaid, the 8th day of January, 1821, this cause was continued.

And at a court continued and held for the District and county aforesaid, the 12th day of June, 1821, this cause was continued.

General dedimusses awarded to take depositions.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 5th day of January, 1822, came the parties aforesaid, by their counsel, and general dedimusses are awarded either party to take depositions; and the cause is continued.

And at a court continued and held for the said District and county, the 12th day of June, 1822, this cause was continued.

And at a court continued and held for the said District and county, the 7th day of May, 1823, this cause was continued.

And at a court continued and held for the said District and county, the first day of July, 1824, this cause was continued.

Set for hearing

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 16th day of December, 1824, by consent, this cause was set for hearing on the bill, answers, depositions, and exhibits; and continued.

Leave to make James Davidson a party, and to amend bill.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 30th day of April, 1825, came the parties aforesaid, by their counsel, and this cause is continued, and, by consent of parties, sent to the rules; and leave is granted to the complainants to make James Davidson a party to this suit, and to amend their bill.

And at the rules held in the clerk's office of the said court for the months of May, June, and July, this cause was continued.

And at another day, to wit, at the rules held in the clerk's office of the said court for the month of August, in the same year, came the defendants, by their counsel; and day is thereupon given the complainants, until the next rules, to file his amended bill; and the same day is given the defendants, there, &c.

And at another day, to wit, at the rules held in the clerk's office for the month of September, in the same year, came the complainants, by their solicitor, and filed an amended bill, which is in the words and figures following:

VOWELL AND OTHERS,
against
LENOX AND OTHERS.

Amended bill.

The court having granted to the complainants leave to amend their bill, and to make James Davidson a party to this cause, the said complainants, by way of amendment to their said bill, beg leave to state—

That the said defendant Davidson was cashier of the late Bank of the United States, and continued as such until the expiration of the charter of the said bank; and, ever since the expiration of the said charter, has acted as the agent of the trustees of the said bank.

Your complainants have understood that the books and papers, in relation to the affairs of the Office of Discount and Deposite of the said bank in Washington, were left with the said defendant Davidson, and are now in the possession of the said Davidson.

Your complainants do therefore call upon the said defendant Davidson to produce the books and papers of the said bank, in order that the complainants may have the benefit of the same upon the trial of their case; and the complainants do require of the said Davidson to look upon the exhibits filed by the complainants with their original bill, and declare whether they are not true copies of the original letters sent to the said office in Washington; and, if not, which of them are not, and in what respect are they incorrect or untrue.

The defendant Davidson is also required to state whether the ship Governor Strong was not transferred by Alexander Henderson & Co. to the late Office of Discount and Deposite in Washington, as a security for the debt of the said firm of Henderson & Co.; or in what way, and upon what amount, was the said transfer made? and when was the said transfer made? and when was the policy of insurance upon the said ship transferred or delivered to the said bank? If the said ship was ever transferred to the said bank, or any lien, of any kind, ever given to the said bank, the said defendant is requested to annex to his answer the said original transfer, or a true copy of the same. The said defendant is also required to look at exhibit No. 1, and to state whether the said exhibit is not a true copy of the original letter; and whether James Wilson was not, at the time of the date of that letter, dead; and whether the notes in that exhibit referred to ever were sent by James Wilson to the said bank.

The defendant is also required to state whether he was not the cashier of the office at Washington at the time the transactions above alluded to took place; and has he not been, and is he not now, the agent for the trustees of the late bank, so far as it regards the affairs of the said office at Washington?

The defendant is requested to state in what way the notes were deposited in bank, as stated in his former answer, on the 30th of May, 1805: were they sent by James Wilson in a letter to the bank? and, if so, the defendant is required to produce the letter which so enclosed them, or a copy of the same, and the entry made upon the books of the bank in relation to the said notes.

The defendant, in his former answer, states that there was an understanding, at the time of the deposite of some notes in the said bank by James Wilson, that, in case the underwriters should not be ultimately liable, the money which might have been paid upon them should be refunded. The defendant is again required to state upon what notes this understanding did take place: were they the notes sent by James Wilson in his life time? and, if so, did he ever send any other notes than those hereinbefore mentioned of the 30th of May, 1805?

The defendant is required to answer the several matters and things, in order that justice may be done in the premises.

THO. SWANN,
Attorney for the Complainants.

And at another day, to wit, at the rules held for the month of November, (this cause having been continued at the last rules,) came the complainants aforesaid, by their said solicitor, and day is thereupon given the defendants until the next rules, to answer the complainants' amended bill; and the same day is given the complainants, there, &c.

And at the rules held in the clerk's office of the said court for the month of April, in the year 1826, (until which time this cause had been regularly continued,) came the complainants, by their solicitor; and, on their motion, a subpœna is awarded against James Davidson to answer their amended bill; which subpœna, with the marshal's return thereon, is in the words and figures following:

Subpœna ad Resp.

District of Columbia, to wit:

[L. S.] *The United States of America to the Marshal of the District of Columbia,* greeting:

You are hereby commanded to summon James Davidson to appear before the honorable the judges of the circuit court of the

District of Columbia for the county of Alexandria, at the court-house of said county, in the town of Alexandria, at the next court, to answer an amended bill in chancery exhibited against him by William Yeaton and Thomas Vowell and others; and this he shall in no wise omit, under the penalty of $333 33; and have then there this writ. Witness, the honorable William Cranch, Chief Judge of our said court, this 26th day of March, 1826.

EDM. I. LEE, *C. C.*

Summoned James Davidson.

T. RINGGOLD, *Marshal.*

Amended bill taken for confessed, and cause set for decree.

And at another day, to wit, at rules held in the clerk's office of the said court for the month of September, 1826, on the complainants' motion, their amended bill is taken for confessed, and the cause is set for decree on the bills, answer, depositions, and exhibits filed.

Suit abates as to Young, Ladd, Tucker, & Marsteller.

Answer to amended bill filed.

Complainants' bill dismissed with costs.

Agreement.

And now here, at this day, to wit, at a court continued and held for the District and county aforesaid, the second day of December, 1829, it is ordered that this suit abate as to the complainants, Robert Young, John G. Ladd, John Tucker, and Ferdinand Marsteller, by their deaths; and the answer of James Davidson, on behalf of David Lenox and others, trustees of the late Bank of the United States, to the amended bill of the complainants, being this day filed, the order taking the said amended bill for confessed is set aside, and the complainants' reply generally to the said answer; and, by consent of parties, this suit being set for decree as to the said Lenox and others, trustees of the said bank, on the bills, answers, exhibits, and depositions, and on the account taken by Master Commissioner Auld, and now coming on to be heard, it is by the court, on consideration thereof, decreed that the complainants' bill be dismissed with costs as to the said David Lenox and others, trustees as aforesaid; and as to the defendant Elizabeth Wilson, this suit is abated by her death. And the complainants admitting that the said Robert I. Taylor has fully administered the assets of the said James Wilson which came to his hands, this suit is dismissed, as to him, without prejudice to any future suit or action against him by the complainants; and the said Robert I. Taylor, on his part, agrees that complainants' admission of a full administration, as aforesaid, shall not be used against them in any future action, but shall be limited to the proceedings in this case only.

Appeal granted.

The complainants prayed an appeal to the next Supreme Court of the United States, which is granted.

The aforementioned answer of James Davidson to the amended bill of the complainants, is in the words and figures following, to wit:

Answer of J. Davidson to amended bill.

The answer of James Davidson to the amended bill of William Yeaton and others, against David Lenox and others.

This respondent says, that he was cashier of the Office of Discount and Deposite of the late Bank of the United States at Washington, from the establishment of the said office until the termination of the charter of the said bank, and has since retained in his possession the books and papers of the said office, and acted as its agent in closing its business; and is ready to produce such books and papers as the complainants may require, and the court may direct to be produced.

That this respondent herewith exhibits, marked No. 1, the original letter of which the complainants' exhibit No. 1 purports to be a copy: that the complainants' exhibit No. 2 is in the handwriting of Joseph Carleton, president of the said office at the time it bears date; and his exhibits No. 4, 6, and 7, are in the handwriting of John P. Van Ness, who was president of the said office at the periods they bear date. That this respondont has no knowledge or information as to exhibits No. 3 and 5, having seen no letters amongst the papers of the office corresponding with them. That the ship Governor Strong never was transferred by Alexander Henderson & Co. to the said bank, but was transferred by the administrator and administratrix of James Wilson, to secure the payment of a debt due from Alexander Henderson & Co. to the said bank, under the endorsement of the said Wilson. That this respondent cannot undertake to say on what precise day the transfer was made; but is satisfied it must have been between the 25th of September and the end of October, 1805. That he has no recollection of the time the policy of insurance on the Governor Strong was transferred to said bank. That this respondent has never seen, to his recollection, the deed or instrument by which the said ship was transferred, and has no such paper in his possession. That this respondent has been informed and believes that James Wilson died on the 9th day of July, 1805.

That, in relation to the notes of Robert Young and others, deposited by James Wilson on the 30th of May, 1805, to go, when paid, to the credit of Alexander Henderson & Company, this respondent has no further information than is contained in his answer to the complainants' original bill. He does not recollect in what manner they were transmitted to the bank, nor whether they were accompanied by any letter: no such letter is now in his possession. That no entry was made on the books of the said bank in relation to said notes, except that they were to go, when paid, to the credit of Alexander Henderson & Company, to whose credit such of them as were paid were carried.

That, in this respondent's former answer, he stated that the Bank of the United States had received, in January, 1806, sundry promissory notes from James Wilson, amounting to $2,134 04; which, when paid, were to be placed to the credit of Alexander Henderson & Co. on account of a loss by the underwriters; and that he believes there was some understanding, at that time, that, inasmuch as the loss or liability on account of the underwriters was uncertain, in case it should ultimately prove that they were not liable, the said notes, if not paid, should be returned; or, if paid, the money paid for them should be refunded. That this respondent has since discovered, from reference to the letter accompanying the said notes, (which is hereinbefore referred to, and exhibited as the original letter of which the complainants' exhibit No. 1 purports to be a copy,) that he was in error in the said statement; and that the said notes were transmitted by John Tucker, chairman of the Marine Insurance Association. For the purpose for which they were transmitted, this respondent refers to the said letter. That, as stated in his former answer, no condition or agreement to return the notes, or refund the money which might be paid on them, was annexed to the notes deposited on the 30th of May, 1805. That this respondent knows of no deposite or transfer of notes by the said James Wilson on account of the said debt of Alexander Henderson & Co., other than those deposited on the 30th of May, 1805. That the notes transmitted by the said John Tucker in January, 1806, were delivered, by his order, to Lewis Deblois on the 2d day of April, 1806. The order and receipts this respondent herewith exhibits, marked No. 2.

JAMES DAVIDSON.

WASHINGTON COUNTY, *District of Columbia.*

This day James Davidson appeared before me, a justice of the county aforesaid, and made oath that the matters in the foregoing answer, stated as of his own knowledge, are true; and all others he believes to be true.

Given under my hand, this twenty-second day of April, 1828.

RICHMOND JOHNSON, *J. P.*

Order of Supreme Court U. S. dismissing appeal filed.

And afterwards, to wit, at a court continued and held for the District and county aforesaid, the 23d day of April, 1831, the defendants, David Lenox and others, brought into court a certified copy of an order of the Supreme Court of the United States, dismissing the appeal heretofore taken from the decree of this court in favor of the defendants; which, on their motion, is ordered to be filed.

EXHIBITS.

No. 1.

Correspondence between Chairman of the Insurance Association and the President of the Branch U. S. Bank, Washington.

ALEXANDRIA, *22d January,* 1806.

GENTLEMEN: At the request of the Marine Insurance Association of Alexandria, I take the liberty to enclose sundry notes given *by Mr. James Wilson on certain conditions, as follows,* viz.

The subscribers, on a policy of insurance on the ship Governor Strong from hence to Liverpool, agreed to accommodate Mr. Wilson with their several notes, payable in sixty days, for the purpose of making a payment to your bank in part of the debt due by A. Henderson & Co., for the security of which a lien on the ship Governor Strong had been given; which notes were granted to him in part of an average loss *then supposed* to have taken place on said ship at Liverpool, but the want of some papers prevented any regular claim being made on the office. At the same time, they received the enclosed notes from Mr. Wilson payable in five months, provided the loss on the Governor Strong was not within the policy of insurance, and satisfactory proof produced within that time five months. The protest and other documents have come to hand since the death of Mr. Wilson. By the former it appears that the damage which the ship sustained was two days after her arrival at Liverpool; and the policy provides for her safe arrival twenty-four hours, and no more; consequently the underwriters are not bound to pay the loss. Under these circumstances, the subscribers on that policy submit to your consideration whether you will refund the amount of those notes that Mr. W. made over to you in payment on the above stipulations.

James Wilson's notes dated 29th May, 1805,

payable to Marsteller & Young, (Wm. Yeaton,)	$610	72
to William Yeaton	236	93
to R. Young	169	25
to J. G. Ladd	135	47
to *T.* Tucker	169	25
to P. G. Marsteller	101	55
to C. Powell	169	25
to R. Veitch & Co.	101	55
to N Wattles & Co.	169	27
to Thomas Vowell, junior,	270	80
	2,134	04

Cash paid on account of G. Gilpin	$132	52
J. Dean	133	33
A. Smith & Son	116	67
Janney & Patton	71	01
R. B. Jamieson	133	33
Discount	15	86
	610	72
	2,744	76
James Wilson's own note for	588	57
	$3.333	33

No. 2.

Office of Discount and Deposite,
Washington, February 12th, 1806.

Sir: I am now instructed to inform you, in reply to your letter of the 28th ultimo, that it is the unanimous opinion of this board, that the underwriters upon the policy of insurance on the ship Governor Strong, from Norfolk to Liverpool, are liable to the assured and his assigns for a just average of the loss and damages which the said ship sustained in proceeding into the aforesaid port of Liverpool; but, as a difference of opinion seems to exist between the parties interested in this insurance, the board have no objection to refer the matter in dispute to two indifferent persons—one to be chosen by the board, the other by the underwriters, with power to choose a third person in case they cannot agree; the determination of any two whereof to be binding and obligatory on the said parties. Being,

Very respectfully, sir,
Your ob't humble serv't,
JOS. CARLETON,
President.

John Tucker, Esq.,
Chairman of the Marine I. Association,
Alexandria.

No. 3.

Alexandria, 18*th February,* 1806.

Sir: Your letter of the 12th instant, respecting the insurance on the ship Governor Strong, was received and laid before the underwriters on that day, who have agreed to refer the matter in dispute to two indifferent persons, as proposed by your board. If those two cannot agree, they are to choose a third person: the determination of any two of them shall be binding and obligatory on the said parties. It is understood by the parties that, if the award should be in favor of the bank, that the sum of   dollars which was paid to Mr. Wilson on account of said policy, shall be considered a part payment of said loss; and, should the award be in favor of the underwriters, that the bank in that case will refund the amount of sundry notes given by Mr. James Wilson for that purpose, agreeable to my last of the 22d ultimo, enclosing the said notes. The writers on the policy of the Governor Strong have appointed William Hodgson, esq., on their part.

Respectfully, I remain, sir,
Your obedient servant,
JOHN TUCKER,
Chairman M. I. A.

Joseph Carleton, Esq.

No. 4.

Office of Discount and Deposite,
Washington, March 12*th,* 1806.

Sir: Yours of the 12th ultimo to the late president of this office, agreeing on behalf of the Marine Insurance Association to a proposed reference of the dispute between us respecting the insurance on the ship Governor Strong, was duly received; and we feel gratified with the prospect of a discussion and termination of that difference in a manner the least disagreeable to both parties. For the purpose of effectuating this desirable object, we have, on our part, appointed Mr. John Laird; but, owing to the delicate state of his health, we fear he will not be able to attend at Alexandria. It would therefore be an accommodation to us, and we hope not inconvenient to you, to have the meeting of the referees in this city or Georgetown; upon which point you will please to advise us.

We agree that, in case the award be in our favor, whatever sum was actually paid into the bank *on account* of the *policy*, shall be considered a part payment of the loss.

With respect, I am, sir, your
Very obedient servant,
JOHN P. VAN NESS,
Prest. of Off. Dis. and Deposite,
Washington.

Mr. John Tucker.

No. 5.

Alexandria, 26*th March*, 1806.

Sir: Yours of the 12th instant I have received, and laid before the subscribers on the policy of the ship Governor Strong, who are in favor of an arbitration in Alexandria, as the papers are here, and such evidence as can be produced is also here: it would be difficult, on their part, to get persons to attend at Georgetown or Washington. The terms on which they will arbitrate were stated in my letter to Mr. Carleton of the 18th ultimo, as follows: "*If the award should be in favor of the bank, that the amount paid to Mr. James Wilson shall be considered a part payment of said loss;*" and, if in favor of the Marine Association, that the bank, in that case, will refund the amount paid to them by Mr. James Wilson, (in sundry notes,) on account of the ship Governor Strong, together with his note endorsed by Richard Veitch & Co. for account of said policy of insurance. The Marine Insurance Associaton are of opinion that some evidence may be obtained at Liverpool, that would be necessary in settling the loss on the Governor Strong, if admitted on the part of the bank. They do not, however, wish to procrastinate by this insinuation, but merely make the proposal for the consideration of your board; and remain,

Respectfully, dear sir,
Your obedient servant,
JOHN TUCKER,
Chairman Mar. Ins. Association.

John P. Van Ness, Esq.

N. B. Wm. Hodgson, esq., who was named on the part of the office, will not serve.

Under the 28th January, enclosed sundry notes given by Mr. J. Wilson, dated 29th May last, and payable in five months, say ten notes, as per list of the above date, amounting to $2,134 04, which you will please return by Mr. Deblois; and oblige

Yours, &c.
J. T.

No. 6.

WASHINGTON, *April 6th*, 1806.

SIR: Yours of the 26th ultimo is received, and has been submitted to the direction of our Office of Discount and Deposite. The advantage, to both parties, of having the most competent arbitrators to decide on our difference relative to the ship Governor Strong, we hoped would have outweighed any trifling inconvenience which might arise from a transmission of evidence (consisting chiefly, it is presumed, of papers) from Alexandria to this vicinity. It was, therefore, that we nominated Mr. Laird, although the state of his health we found would prevent his attendance at the former place. The place of meeting, however, it seems will not be a material point between us, as you repeat certain terms on which only it is understood your association will arbitrate; in answer to which, I am instructed to inform you that our office cannot submit to any *conditional* arbitration. We would, indeed, for obvious reasons, have preferred an arbitration in this case, but think it unreasonable that we should be, as we certainly are not, bound to any consequences not legally resulting from the decision of such a tribunal; more particularly since there is at hand another remedy to which, however, we regret the necessity of resorting.

The notes, for which you wrote, have been delivered to Mr. Deblois, and doubtless received by yourself.

With respect, I am, sir,
Your very humble serv't,
JOHN P. VAN NESS,
Pres't Office of Discount & Deposite,
Washington.

TO JNO. TUCKER, Esq., *Chairman of*
Mar. Ins. Association.

No. 7.

April 27th, 1806.

SIR: According to your desire, I communicated to the directors of the Office of Discount and Deposite in this place, at their first meeting succeeding our interview, the explanation you was so obliging as to give me of the ideas of the Marine Insurance Association respecting our difference upon the subject of the Governor Strong, and the terms on which you propose an arbitration. They appear to have understood the latter as they were intended, although we supposed they might have been misapprehended. The conclusion is, as before, that, although they would have preferred a decision in the least disagreeable mode, they cannot, in justice to themselves, submit to the conditions you offer.

With respect, sir, your
Obd't and very humble serv't,
JOHN P. VAN NESS,
Pres't of Off. Dis. and Dep.,
Washington.

JOHN TUCKER, Esq., *Chairman Mar.*
Ins. Association, Alexandria.

$266 67. ALEXANDRIA, 29*th May*, 1805.

Note.

Sixty days after date, I promise to pay Mr. Jas. Wilson, or order, two hundred and sixty six dollars and sixty-seven cents, value received, payable at the Office of Discount and Deposite, Washington.

THOS. VOWELL, Jr.

(Endorsed—James Wilson.)

No. 350.

Marine Insurance Association of Alexandria.

Policy of insurance.

Whereas, James Wilson, as well in his own name as for and in [VESSEL] the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in the whole, do make assurance, and cause himself and them, and every of them, to be insured, lost or not lost, at and from Norfolk to Liverpool, upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of the good ship called the Governor Strong, whereof is master for this present voyage Clarke, or whosoever else shall go for master in the said vessel, or by whatsoever other name or names the said vessel, or the master thereof, is or shall be named or called; beginning the adventure upon the said vessel, tackle, apparel, &c., at and from Norfolk aforesaid, and so shall continue and endure until the said vessel be safely arrived at Liverpool aforesaid, and until she be moored twenty and four hours in good safety. And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any port or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said vessel, tackle, &c., for so much as concerns the assured, by agreement made between the assured and assurers in this policy, are and shall be valued at ten thousand dollars, without any further amount to be given by the assured to the assurers, or any of them, for the same. Touching the adventures and perils which we, the assurers, are contented to bear and take upon us in this voyage, they are of the seas, men of war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes, which have or shall come to the hurt, detriment, or damage of the said vessel, or any part thereof. And, in case of any loss or misfortune, it shall be lawful to and for the assured, his factors, servants, and assigns, (and the assured, on their part, agree and engage, by themselves, their factors, servants, or assigns,) to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said vessel or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute, each one according to the rate and quantity of this sum herein insured. And it is agreed by us, the assurers, that this writing or policy of insurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in any of the United States of America or elsewhere. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods, to the assured, his executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the said assured, or their assigns, at and after the rate of three per cent. And, in case of loss, the assured is to abate two per cent.; such loss to be paid in sixty days after proof and adjustment thereof—the amount of the note given for premium, if unpaid, being first deducted. And it is agreed that, if any dispute shall arise relating to a loss on this policy, it shall be referred to two indifferent persons, one to be chosen by the assured, the other by the assurer or assurers, who shall have full power to adjust the same; but, in case they cannot agree, then those two persons shall choose a third, and any two of them agreeing, their determination shall be obligatory on both parties. But it is understood and agreed to, by and between the insurers and insured, and all parties to these presents, that any loss which may arise under this policy shall be paid by the persons insuring, in proportion to the sums by them respectively subscribed; and that no responsibility shall attach on any such person, in any event, beyond his said proportion.

In witness whereof, we, the assurers, have subscribed our names and sums insured, in Alexandria, the twenty-sixth day of June, one thousand eight hundred and four.

Memorandum. It is agreed, by and between the assured and assurers, that no loss shall be paid on any average under five per cent., unless the said average be general.

If the above vessel, after a regular survey, shall be condemned for being unsound or rotten, the underwriters shall not be bound to pay their subscriptions on this policy. It is also agreed between the assured and assurers that, in all cases of return premium, one-half per cent. upon the sum insured is to be retained by the insurers; and it is mutually agreed by the parties to this policy that no part of the premium shall be returned or abated on account of any deviation which shall be made by the owners or their factors from the present voyage. Warranted by the assured free from any charge, damage, or loss, which may arise in consequence of seizure or detention of the property for or on account of illicit or prohibited trade. And should the said ship be foundered, or not heard of within twelve months from the time she leaves her last port, then she shall be deemed a loss; which the underwriters engage to pay without further delay.

$10,000.	Ten thousand dollars.
500,	Robert Young, five hundred dollars;
500,	James Wilson, five hundred dollars;
450,	Janney & Patton, by James Wilson, four hundred and fifty dollars;
500,	W. Yeaton, five hundred dollars;
500,	Cuthbert Powell, five hundred dollars;

300, R. Veitch & Co., three hundred dollars;
400, Benj. Shreve, by R. Veitch, four hundred dollars;
400, Nathaniel Wattles, four hundred dollars;
500, Phineas Janney, five hundred dollars;
500, Wm. Oxley, five hundred dollars;
400, R. B. Jamesson, four hundred dollars;
500, John Tucker, five hundred dollars;
400, Wm. Brent, by Robert Young, four hundred dollars;
300, Philip G. Marsteller, three hundred dollars;
350, Alexander Smith & Son, three hundred and fifty dollars;
400, John G. Ladd, four hundred dollars;
600, Thos. Vowell, Jr., six hundred dollars;
400, George Griffin, four hundred dollars;
200, W. Yeaton, two hundred dollars;
100, Nathaniel Wattles, one hundred dollars;
200, Thos. Vowell, jr., two hundred dollars.
200, Phineas Janney, two hundred dollars;
200, James Wilson, two hundred dollars;
600, William Newton & Jno. Mills, jr., six hundred dollars;
400, Joseph Dean, four hundred dollars;
200, Samuel Harper, two hundred dollars.

$10,000.

A.

Notes deposited May 30, 1805.

The following notes were deposited on the 30th May, 1805, by James Wilson, to go, when paid, to the credit of Alexander Henderson & Co., viz.

Robert Young's, paid	31st July,	1805,	for	$166	67
William Yeaton's,	do.	do.	"	233	33
Thomas Vowell, jr.,	do.	do.	"	266	67
William Brent,	do.	do.	"	133	33
William Newton,	do.	do.	"	200	00
John G. Ladd,	do.	do.	"	133	33
Benj. Shreve, jr.,	do.	do.	"	133	33
				$1,266	66
William Oxley's, protested, not paid				166	67
James Wilson,	do.	do.		933	34
				2,366	67
Not paid				1,095	01
				1,271	66

B.

Notes deposited 22d Jan. 1806.

A list of James Wilson's notes sent to Jos. Carleton, esquire, 22d January, 1806.

Payable to	Marsteller & Young	$610 72
"	William Yeaton	236 93
"	Robert Young	169 25
"	John G. Ladd	135 47
"	John Tucker	169 25
"	Philip G. Marsteller	101 55
"	Cuthbert Powell	169 25
"	Richard Veitch & Co.	101 55
"	Nathaniel Wattles & Co.	169 27
"	Thomas Vowell, jun.,	270 80
		$2,134 04

ALEXANDRIA, 1*st April,* 1806.

Order for notes, and receipt.

DEAR SIR: Be pleased to request Mr. Van Ness to deliver to you the above notes; which you will have the goodness to return to

Your obliged servant,
JOHN TUCKER,
Chairman M. I. A.

LEWIS DEBLOIS, Esq.

(Endorsed—) Received the within described notes from James Davidson, jr., cashier, April 2, 1806.

LEWIS DEBLOIS.

DEPOSITIONS.

UNITED STATES OF AMERICA, *Commonwealth of Massachusetts, Suffolk, ss.*

First deposition of L. Deblois.

CITY OF BOSTON, *June* 3, 1824.

I, Samuel Blagge, notary public, and a justice of the peace and quorum, by legal authority appointed and sworn, and dwelling in Boston aforesaid, make known to all whom it may concern, that, on the day and year above written, personally appeared before me, the said notary, Lewis Deblois, who, after being duly examined and cautioned according to law, did, on his oath, declare to the truth of the following answers to the annexed interrogatories, put to him by complainants.

To the first interrogatory, he answers—I was.

To the second, he answers—I recollect that Alexander Henderson was indebted to the Branch Bank of the United States, at the city of Washington, in the years 1805 and 1806, and that James Wilson was his endorser.

To the third, he answers—I believe there was a policy of insurance on the ship Governor Strong, assigned to the bank as security for the debt alluded to in the second interrogatory.

To the fourth, he answers—That the said policies were made over to the bank as collateral security for said Henderson's debt.

To the fifth, he answers—There were notes of Robert Young, William Yeaton, Thomas Vowell, John Tucker, and others, paid into the bank by James Wilson. Those gentlemen, I understood, were underwriters on the policy upon the ship Governor Strong.

To the sixth, he answers—I believe they were.

To the seventh, he answers—I believe there was an agreement made by the bank to return the amount received from the notes deposited, if the underwriters were not liable for the loss.

To the eighth, he answers—I believe the notes were given to Mr. Wilson, with an understanding to that effect; at least, I was so informed at the time.

To the ninth, he answers—I do not, to the best of my recollection, know any thing more.

The said Lewis Deblois being again examined, did, on his oath, declare to the truth of the following answers to the interrogatories put to him by the respondents, which are hereunto annexed.

To the first interrogatory, he answers—That I never examined the books of the bank in relation to the matter stated in this interrogatory. Of course I have no knowledge of the subject.

To the second interrogatory—I answer in the negative.

LEWIS DEBLOIS.

Sworn this third day of June, 1824; and, in testimony whereof, I have hereunto set my hand, and affixed my seal of office, at Boston aforesaid.

[SEAL.]

S. BLAGGE,
Notary Public, and J. Peace and Quorum.

Interrogatories referred to in the foregoing Deposition.

By complainants

1. Were you a director of the Branch Bank of the United States at Washington, in the years 1805 and 1806?

2 Do you recollect any thing of a debt due to said bank by Alexander Henderson & Co., and that James Wilson, of Alexandria, was also liable to said bank, either as endorser or security for said debt?

3. Do you recollect that, in order to secure said debt, there was a lien given upon a ship called the Governor Strong, either by Henderson & Co. to the bank, or to Wilson, or by said Wilson to the bank?

4. Do you recollect the circumstances of an insurance made upon the ship Governor Strong by said Wilson, and that the policy was placed by him in possession of the said bank at Washington, as collateral security for said debt?

5. Have you any recollection of certain notes of Robert Young, William Yeaton, Thomas Vowell, John Tucker, and others, being, in the Spring of 1805, placed in said bank by James Wlson; and whether said notes were given by the same persons who had subscribed the policy upon the ship Governor Strong?

6. Do you know whether their notes were deposited in bank on account of that policy?

7. Do you know whether there was any understanding or agreement with the bank, at the time they were so deposited, that, in case it should afterwards appear the underwriters were not liable for any loss under the policy, the notes should be returned, or any money paid on them should be refunded?

8. Do you know whether any such arrangement or agreement was made between Wilson and the underwriters when they gave said notes, and whether the same was made known to the bank or directors at the time the notes were deposited with them?

9. Do you know of any other matter or circumstance in relation to the transaction alluded to, and touching the interest of said bank, or of said Wilson, or of any of the parties to the said notes? If so, please state the same fully.

Respondents' interrogatories.

1. Was there any arrangement between James Wilson, deceased, and the Office of Discount and Deposite of the late Bank of the United States at Washington; or between the underwriters on the ship Governor Strong and the said office, in relation to the payment of the notes advanced by the said underwriters on account of the loss of said ship, differing in substance from the arrangement which is shown by the books and correspondence of the said bank and its officers with the parties aforesaid? And, if you know of any such different arrangement, state from what source your knowledge is derived.

2. Were you a member of the insurance association by whom the policy on the Governor Strong, at the time of her loss, was subscribed? and have you any interest in the event of this suit?

Respondents except to the answers to the 3d, 6th, 7th, and 8th of the complainants' interrogatories, because they are uncertain, and express the *belief* of the witness founded, most probably, on the complainants' own statements, and not any knowledge of facts made at the trial.

R. I. TAYLOR.

Second deposition of L. Deblois.

Interrogatories stated to Lewis Deblois, of the city of Boston, in the commonwealth of Massachusetts, by Samuel Blagge, notary public for the county of Suffolk, in said commonwealth, and a justice of the peace and quorum for said county, to be used in the case of Yeaton and others vs the Bank of the United States.

Interrogatories by Complainant.

First. Were you a director of the Branch Bank of the United States at Washington, in the years 1805 and 1806?

Answer. I was.

Second. Do you recollect any thing of a debt due to said bank by Alexander Henderson & Co, and that James Wilson, of Alexandria, was also liable to said bank, either as endorser or security for said debt?

Answer. I recollect that Alexander Henderson was indebted to the Branch Bank United States at the city of Washington, in the years 1805 and 1806; and that James Wilson was his endorser.

Third. Do you recollect that, in order to secure said debt, there was a lien given upon the ship Governor either by Henderson to the bank or to Wilson, or by said Wilson to the bank?

Answer. I recollect there was a policy of insurance on the ship called the Governor Strong, assigned to the bank as security for the debt alluded to in the second interrogatory; and that there was a lien on the said ship Governor Strong as security to the Bank of the United States at Washington; but I do not recollect whether it was made by Henderson to the bank, or by Henderson to Wilson, and then by James Wilson to the bank. The board of directors did not require additional security until subsequent to the arrival of the news of the ship having met with the disaster at or near Liverpool, when the underwriters severally gave their notes for the sum each supposed he would be liable for; and, to the best of my recollection, the said notes were deposited in the bank; and were, by agreement, to be given up, or, if paid, the amount returned, if it should subsequently be proved that the underwriters were not liable. Some persons were of opinion that the ship had been in port a period of time sufficient to have exonerated the underwriters before the accident occurred; at least, this was the impression of many when the notes were given.

Fourth. Do you recollect the circumstance of any insurance made upon the ship Governor Strong by said Wilson, and that the policy was placed by him in possession of the Branch Bank United States at Washington, as collateral security for said debt?

Answer. I recollect that the said policies were made over to the bank as security for said Henderson's debt.

Fifth Have you any recollection of certain notes of R. Young, W. Yeaton, Thomas Vowell, John Tucker, and others, being, in the spring of 1805, placed in said bank by James Wilson; and whether said notes were given by the same persons who had subscribed the policy on the ship Governor Strong?

Answer. There were notes of R. Young, W. Yeaton, Thomas Vowell, John Tucker, and others, paid into the bank by James Wilson. Those gentlemen, I understood, were underwriters on the ship Governor Strong.

Sixth Do you know whether these notes were deposited in bank on account of that policy?

Answer. I recollect they were.

Seventh. Do you know whether there was any understanding or agreement with the bank, at the time they were so deposited, that, in case it should afterwards appear the underwriters were not liable for any loss under this policy, the notes should be returned, or any money paid on them should be refunded?

Answer. I recollect there was an agreement made by the bank to return the amount received from the notes deposited, if the underwriters were not liable for the loss.

Eighth. Do you know whether any such arrangement or agreement was made between Wilson and the underwriters when they gave said notes; and whether the same was made known to the bank or directors at the time the said notes were deposited by them?

Answer. I recollect they were given to James Wilson with an understanding to that effect; at least, I was so informed at the time.

Ninth. Do you know of any matter or circumstance in relation to the transaction alluded to, and touching the interest of said bank, or of said Wilson, or of any of the parties to the said notes? If so, please to state them fully.

Answer. I do not, to the best of my recollection, know any thing more.

LEWIS DEBLOIS.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss.*
CITY OF BOSTON, *Nov.* 16, 1824.

Personally appeared before me, Samuel Blagge, notary public, legally appointed and sworn, and dwelling in Boston aforesaid, and a justice of the peace and quorum, dwelling in Boston aforesaid, Lewis Deblois, and made oath to the truth of the preceding answers given by him to the interrogatories aforesaid. In testimony whereof, I have hereunto set my hand, and affixed my seal of office, the day and year above written.

S. BLAGGE,
Not. Public, and Justice Peace.

Respondents' Interrogatories.

First. Was there any arrangement between James Wilson and the Office of Discount and Deposite of the late Bank of United States at Washington, or between the underwriters on the ship Governor Strong and the said office, in relation to the payment of the notes advanced by the said underwriters on account of the loss of said ship, differing in substance from the arrangement which is shown by the books and correspondence?

DISTRICT OF COLUMBIA, } to wit:
Alexandria County, }

I, Edmund I. Lee, clerk of the United States' circuit court of the District of Columbia for the county of Alexandria, do hereby certify that the foregoing is a true transcript of the record and proceedings in a certain cause lately depending in said court, wherein William Yeaton and others were *defendants*, and David Lenox and others were defendants, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof, I hereto set my hand, and affix the seal of said court, this 2d day of March, 1832.

[SEAL.] EDM. I. LEE, *C. C.*

1697.

SUPREME COURT OF THE UNITED STATES.

No. 80.

RICHARD R. KEENE, PLAINTIFF IN ERROR,

VERSUS

JAMES BROWN.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation	3	2
Petition of R. R. Keene	4	3
Deed of exchange referred to in petition	8	3
Citation to James Brown	10	4
Service of citation	11	4
Answer of James Brown to petition	12	4
Statement of George W. Lawson	17	6
Argument of case upon the pleas of jurisdiction, &c	18	6
Deed from Keene to Relf	19	6
Petition of R. R. Keene	21	7
Citation to James Brown, &c	24	8
Service of citation	24	8
Judgment by default entered, and case discontinued	25	8
Certificate of clerk and judge	26	9
Deed from Delebagarre to Livingston	32	10
Partition between Livingston and the trustees of Delebagarre	36	12
Bill of sale from Keene to J. and S. Brown	43	14
Letters from Keene to James Brown	44	14
Answer of James Brown to the petition of R. R. Keene	58	18
Order of court overruling pleas to jurisdiction	60	19
Decree of court	61	19
Bill of exceptions	62	19
Certificate of clerk	87	27

THE UNITED STATES OF AMERICA, ss. The President of the United States of America to the honorable Judge of the District Court of the United States for the Eastern District of Louisiana, having circuit powers, greeting:

Because in the record and process, and also in the rendition of judgment in a suit wherein Richard Reynall Keene was plaintiff, and James Brown defendant, on the 27th June, 1832, manifest error hath intervened to the great damage of him, the said Richard Reynall Keene, as in his complaint hath been stated; and it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the said parties in this behalf, you are hereby commanded, that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the Chief Justice and associate justices of the Supreme Court of the United States on the 2d Monday of January next, at the city of Washington, being the seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done. Witness, the honorable Chief Justice John Marshal, Chief Justice of the Supreme Court, at the city of Washington aforesaid, this last day of the January term, 1832, of the said Supreme Court, A. D one thousand eight hundred and thirty two, and fifty-seventh year of the independence of the United States of America.

[SEAL] BYRD B. WALLER,
Deputy Clk. of the E. D. of Louisiana,
and having circuit powers to issue writs of error, &c.

THE UNITED STATES, *District of Columbia:* To James Brown, a citizen, and holding his domicil in the State of Louisiana, and Eastern District of the State aforesaid:

You, James Brown, are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Louisiana, wherein R. R. Keene is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against you as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand and seal, this 8th day of September, 1832.

SAM. H. HARPER, [SEAL.]
Judge U. S. for La.

(Since acknowledged.)

EASTERN DISTRICT OF LOUISIANA, ss.

Be it remembered that on ninth day of March, in the year of our Lord one thousand eight hundred and thirty-two, into the district court of the United States for the eastern district of Louisiana, came Richard Reynall Keene, a citizen of the State of Maryland, in propria persona, and filed his petition against James Brown, a citizen of the State of Louisiana, as follows, to wit:

To the honorable judge of the district court of the United States in and for the eastern district of Louisiana:

The petition of Richard Reynall Keene, a citizen of the State of Maryland, one of the said States, respectfully sets forth, that, on the 21st day of August, in the year of our Lord eighteen hundred and seven, in the city of New-Orleans, in the district aforesaid, before the then notary public, Pedesclaux, your petitioner executed an instrument of conveyance, or of exchange, an authentic copy whereof is hereunto annexed, in virtue of which said instrument he transferred to James Brown, a citizen or resident of the State of Louisiana aforesaid, holding his fixed and permanent domicil in the parish of St. Charles, in the district aforesaid, and to Samuel Brown, who is, or lately was, a citizen or resident of the State of Alabama, a tract or parcel of land of the extent of five acres in front, with the usual depth, supposed and believed to be forty acres, so as to comprise two hundred square acres on the left bank of the river Mississippi, at the English turn, and gave them possession of the same. That in consideration of, and as an equivalent for, said tract or parcel of land, the said James Brown and Samuel Brown became and remained bound in virtue of the instrument aforesaid, which was duly signed and executed by them, as well as your petitioners in the manner aforesaid, separately and jointly to transfer and convey to your petitioner, and to put him in possession of a lot of ground of the dimensions of sixty feet front and one hundred and twenty feet deep in the batture of New Orleans, in the district aforesaid, then adjudged to, or belonging to the estate of, in more or less quantity, John Gravier. That the said James Brown, however, as well as the said Samuel Brown, has ever neglected or refused to designate with precise and specific metes and bounds the lots of ground aforesaid, and to give to your petitioner possession or seizin of the same. That the said James Brown, being separately and individually, (as well as jointly,) bound to give to your petitioner possession or seizin of the said lot of ground with it, specific metes and bounds, and having ever neglected and refused so to do, and still neglecting and refusing so to do, and also neglecting and refusing to give your petitioner the value of said lot of ground, which said value at the present time amounts to fifty thousand dollars current money of the State of Louisiana aforesaid. Your petitioner therefore prays that the said James Brown be cited to appear and answer this petition, and be condemned to give to your petitioner possession or seizin of said lot of ground, with the metes and bounds aforesaid, of the value aforesaid, or to pay to him the amount of said value in current money as aforesaid, together with interest, costs, and such other relief as the nature of the case may require, &c.

RICHARD REYNALL KEENE, *P. P.*

Deed of exchange referred to in the foregoing petition.

Know all men by these presents, that I, Richard Reynall Keene of the city of New Orleans, for and in consideration of a certain lot or parcel of land consisting of sixty feet front and one hundred and twenty feet deep, situated on the batture, lately decreed and adjudged to John Gravier by the superior court holden in said city, have conveyed and transferred, and by these presents do convey and transfer unto James Brown and Samuel Brown of said city, all my right, title, and interest in and to a certain tract or parcel of land consisting of five arpens front and forty acres deep, and situated at the English turn on the left bank of the river Mississippi, be the same more or less, which said tract of land I, the said Keene, purchased in the year 1805 of Helene Modeste Barbarin nu Gennault, hereby warranting and defending unto the said James and the said Samuel all my right and title as aforesaid, and unto all persons claiming under them. In testimony whereof I have hereunto subscribed my name, this 21st August, A. D. 1807. Signed, Rich'd Rayl Keene, James Brown, Saml. Brown, Pierre Pedesclaux. I certify the foregoing to be a true copy of the original act extant in my register, according to the laws and usage of the State. In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at New Orleans, this 25th day of February, 1830.

LOUIS S. CAIRE, *Not. Pub.*

Citation to defendant.

The President of the United States of America to the marshal of the Eastern District of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded to cite James Brown, so that he be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans on the 3d Monday in May, 1832, to answer the complaint of Richard Reynall Keene, and that he do file his defence or answer with the clerk of said court on or before the same, or judgment will be given against him by default; and hav you then and there this writ. Witness the Hon. Samuel H Harper, judge of said court, at the city of New Orleans, this 10th day of March, 1832, and 56th year of the independence of the United States.

B. WALLER, *D'y Clk.*

The foregoing citation, together with a copy of the plaintiff's petition, &c., having been placed in the hands of the marshal of the said court for service, was returned afterwards, to wit, 10th May, 1832, upon which appears the following return:

"Received, March 1832, served May 9th on Humphrey, the agent of Brown, and at the domicil of James Brown. Returned into court, May 10th, 1832.

L. C. BACON, *D. M.*"

And afterwards, to wit, on the 21st day of May, 1832, in obedience to the foregoing citation, into the said court came the said defendant, James Brown, and filed the following answer to the plaintiff's petition, to wit:

To the honorable District Court of the United States in and for the Eastern District of Louisiana:

The answer of James Brown to the petition of Richard Reynall Keene, respectfully shows, that your respondent denies the jurisdiction of this honorable court, on the ground that the plaintiff, as well as your respondent, is a citizen of the State of Louisiana, and on the ground, moreover, that the heirs of Samuel Brown are equally and justly with himself interested in the defence of this suit, and the said heirs are neither alleged to be, nor in fact are, citizens of the State of Louisiana. Your respondent further alleges that his wife has lately departed this life, and her heirs have accepted the commuting of acquits that existed between them; that one fourth of the demand of the plaintiff, if just, is due by the laws of Louisiana, from them, and they are not citizens of Louisiana, so that this honorable court has not jurisdiction over the persons interested in the defence of this suit, nor of the contract on which the suit is founded: wherefore, your respondent prays that this suit may be dismissed, because the court has no jurisdiction of the same. If these pleas to the jurisdiction of the court should be overruled, your respondent denies that the act sued upon contains any obligation on his behalf to convey to the petitioner a lot of ground on the batture, or that he ever was so liable as stated in plaintiff's petition to make such conveyance; your respondent alleges that the late Peter Delabegarre, about the 20th day of March, A. D. one thousand eight hundred and four, purchased from John Graner two undivided thirds of the batture by an act under private signature, which said Delabegarre caused to be recorded by Pierre Pedesclaux, notary public, on the 27th day of March, in the year one thousand eight hundred and four. Your respondent further shows that Peter Delabegarre sold one undivided third of said batture to Edward Livingston by a private act dated about the 26th day of March, 1804, and which was recorded on the 25th day of February, 1807, before Eliphalet Fitch, a notary public of New Orleans. Your respondent shows that Peter Delabegarre and Edward Livingston having thus acquired interests in the batture, employed your respondent as counsel in prosecuting a suit which John Graner had commenced against the Corporation of New Orleans for the possession of the batture, and, on the successful termination of said suit, agreed to give him a lot of ground on the batture measuring sixty feet front on Tchapitoulas street, by one hundred and twenty feet in depth, for and in consideration of his professional services in that case. Your respondent further shows that, by a partition made between Edward Livingston and trustees appointed by the will of Peter Delabegarre, dated the fourteenth day of August, 1807, and enregistered by Edward Livingston on the 27th day of August, 1818, they recognized the right of your respondent to said lot of ground, and the trustees for the heirs of said Delabegarre agreed to convey the same to him. Your respondent alleges that he and his brother Samuel Brown exchanged their right to said lot with the petitioner for his right to the tract of land mentioned in his petition, without any warranty on either side; and required the plaintiff to produce any writing in his possession, if he has any, by which it will appear that they merely transferred to him their rights against the proprietor of the batture, and nothing more; and the plaintiff has expressly acknowledged that it was only your respondent's right against Livingston that he purchased. Your respondent alleges that it was in the power of the plaintiff to have obtained the possession of said lot, because the said Edward Livingston and the heirs of Delabegarre possessed, until lately, a considerable portion of the batture; and, if it is no longer in his power, the opportunity has been lost entirely by his own neglect, for many years, to make his claim and demand; and your respondent is in no manner liable for the loss. Your respondent further pleads, that the demand against him for the value of said lot or damages, if it ever existed, it is prescribed by law. He further alleges that if the claim of the plaintiff were just, he is liable only for one fourth of the same. He further pleads that the plaintiff, at all events, is only entitled to the value of the lot in the year 1807, and interest from the judicial demand, which value your respondent alleges did not exceed five thousand dollars. Wherefore your respondent prays judgment in his favor against the plaintiff's demand, and for costs of suit: as in duty bound, &c.

ISAAC T. PRESTON, *Att. for Defendt.*

The defendant's counsel, upon mentioning his mistake in preparing the foregoing answer, speaking of the value of the said lot in 1807, having inserted the value at five thousand, instead of five hundred, by consent of the plaintiff was permitted to file the following statement, to wit:

"This answer was handed me by Mr. Preston to be copied; in doing which I committed the error of writing *five thousand* instead of *five hundred*, as in the original. It was then signed by Mr. Preston without reading it over, and filed by me in this court.

GEO. W. LAWSON."

And afterwards, to wit, on the 11th day of June, 1832, at a court of the United States held for the eastern district of Louisiana, the following entry was made upon the writ, to wit:

MONDAY, *June* 11, 1832.

The court met pursuant to adjournment: Present, hon. Saml. H. Harper.

RICHARD R. KEENE, *plaintiff,*
against
JAMES BROWN, *defendant.*

This being the day for which this cause had been regularly set for trial, was called, taken up, and argued upon the pleas to the jurisdiction, which was then submitted to the court for decision, together with the whole case, upon its merits, with the documents therewith filed and relied on, upon the testimony of D. T. Walden, as to the value of the property in 1824, and at the present time, on the testimony of P. Moore, that Mr. Keene was absent from Louisiana from 1807 until 1830. On the case of Livingston and others against the marshal, to show they were put in possession of the batture by this court. On the testimony of John Nicholson to show the possession by Livingston and others, and the heirs of Delabegarre, of property on the batture until 1830. That he was one of the executors of A. S. Duncan, deceased, and had no knowledge of Duncan's having ever received the lot, or any equivalent for it mentioned in the instrument. Speaking of the lot to be conveyed to James Brown by the trustees of the heirs of Delabegarre, and the further evidence of S. P. Moore, that he heard James Brown say that he had derived a profit equal to $8,000 from his batture bargain with Keene: upon all which the court took time to consider and examine the case.

Know all men by these presents, that I, Richard Reynall Keene, of the city of New Orleans, counsellor at law, and major of the second battalion of the second regiment, for and in consideration of the sum of ten thousand dollars to me in hand paid, have conveyed and sold, and by these present do convey and sell unto Richard Relf, merchant of the city of New Orleans, a certain tract or parcel of land, consisting of seven acres front by forty acres deep, situated in or near one-fifth part of a league to the fort of Baton Rouge, above the said fort, and on the same side of the Mississippi, with all its improvements, advantages, and benefits, to be and remain to and for the sole and proper use and enjoyment of the said Richard Relf, his heirs and assigns forever; the said seller hereby guaranteeing to the said purchaser full, complete, and absolute dominion, property, and title, in and to the said tract of land, and to the said purchaser's heirs and assigns. Given under my hand, this 7th day of August, A. D. 1807.

Signed RICHD. REYNALL KEENE,
JN. BTE. RAMIREZ,
JOAQN. SORANO.
PETER PEDESCLAUX, *Notary Public.*

I certify the foregoing to be a true copy of the original act extant in my register, according to the laws and usage of this State. In faith whereof I grant these presents under my signature, and the impress of my seal of office at New Orleans, the eighth of the month of June, A. D. 1832.

N. B. Mr. R. Relf, the purchaser, did not sign the deed.

LOUIS S. CAIRE, *Not. Pub.*

STATE OF LOUISIANA, *First Judicial District Court:*

RICHARD R. KEENE,
vs.
J. and S. BROWN.
8745
Petition filed 5th March, 1830.

To the honorable the judge of the first judicial district of the State of Louisiana, the petition of Richard Reynall Keene, a resident of the city of New Orleans, respectfully states that your petitioner, on the 21st day of August, in the year 1807, made and executed before the notary, Pedesclaux, in said city, with James Brown, ex-minister plenipotentiary or diplomatic agent of the United States at the court of Paris, and now holding his domicil at Philadelphia, in the State of Pennsylvania, and Samuel Brown, brother of the said James, now deceased, an agreement or bargain of exchange; in and by which agreement, as from an authentic copy hereto annexed will more fully appear, they, the said James Brown and Samuel Brown, received, a conveyance of, and exercised dominion over, from your petitioner a certain tract or parcel of land consisting of five acres front and forty acres deep at the English turn, on the left bank of the Mississippi, for and in consideration of which tract of land they, the said James and Samuel Brown, were bound to put your petitioner in possession, as his lawful and exclusive property, a certain parcel or lot of ground to consist of sixty feet front and one hundred and twenty feet deep, situated upon the batture, then recently adjudged to John Graner of the Superior of said city of New Orleans. That the said James Brown, although having taken possession of, and having exercised dominion and ownership over, said tract of land, have never yet put your petitioner in possession of, or enable him to exercise dominion or ownership over, said lot; neither have they made, or caused to be made, any specification of the precise locality or relative situation of said lot, whereby possession could be taken of it, nor have they paid, or caused to be made to your petitioner, payment of the price and value of said lot; which said price or value your petitioner avers to be twenty thousand dollars, although repeatedly applied to for the same. Wherefore, your petitioner prays that the said James Brown, for himself and in behalf of his said brother Samuel Brown, be cited to ap-

pear through a curator *ad hoc*, to be appointed by your hands, and be ordered and adjudged to put your petitioner in possession of said lot of ground, or to pay to him the price and value aforesaid of twenty thousand dollars, together with all such other relief as justice may require, and costs, &c.
(Signed) RICHARD REYNALL KEENE, *P. P.*

Judge's Order.

It is ordered that John B. Humphreys be, and he is hereby appointed, attorney *ad hoc* to the absent defendant, James Brown.
(Signed) JOSHUA LEWIS.

Citation.

The State of Louisiana, *First Judicial District Court:*

R. R. Keene,
vs.
J. and S. Brown.
No. 8745.

Mr. James Brown, for himself and in behalf of his brother Samuel Brown, deceased, by John B Humphreys, appointed attorney *ad hoc*.

You are hereby summoned to appear at the office of the sheriff of the parish of New Orleans, and comply with the prayer of the annexed petition, or file your answer thereto in writing in the office of the clerk of the first judicial district court, at the city of New Orleans, in ten days after the service hereof. Witness, the hon. Joshua Lewis, judge of the said court, the 5th day of March, A. D. 1830.
(Signed) JNO. L. LEWIS, *Clk.*

Sheriff's Return.

Received March 5, 1830: I served on the 11th of said month copy of the petition and citation on Jno. B. Humphreys. Returned, March 11th, 1830.
(Signed) J. H. HOLLAND, *Dy. Sheriff.*

Judgment by default, 25th March, 1830.

Richard R. Keene,
vs.
J. and S. Brown.
No. 8745.

On motion of the plaintiff on going before the court to understand that the defendants have failed to appear by their attorney *ad hoc*, or to file an answer, it is ordered by the court that judgment by default be entered herein.

Order, 3d April, 1830.

Richard R. Keene,
vs.
J. and S. Brown.
No. 8745.

On motion of the plaintiff, it is ordered by the court that this case be discontinued.

State of Louisiana, *First Judicial District Court:*

I hereby certify the foregoing petition judgment by default, and order, to be copied from the originals on file in the office of the clerk of this court among the proceeds had in the above case. Clerk's office, this 8th day of June, 1832.

JNO. L. LEWIS, *Clk.*

I, Joshua Lewis, sole judge of the first judicial district court of the State of Louisiana, do hereby certify that John L. Lewis is clerk of the said court, and that the signature "John Lewis, clk.", to the foregoing certificate, is in the proper handwriting of him, the said clerk; to his official acts as such, full faith and credit is due and owing. And I do further certify that his certificate is in due form of law. Given under my hand and seal, at the city of New Orleans, on this 8th June, A. D. 1832.

JOSHUA LEWIS.

Aujourd'hui, vingt septiène jour du mois du mars, de l'année mil-huit-cent-quatre, le vingt, huilième de l'independance Americaine après-midi. Par devant nous Pierre Pedesclaux, notaire public des Etats Unis d'Amerique, à la Nouvelle Orleans, capitale de la Louisiane, fut present le sieur Pierre Delabegarre, habitant à la Nouvelle Yorck, Nord Amerique, actuellement en cette ville, paroisse de St. Louis; lequel nous a presenté un acte, sous signature privée, ecrit sur une feuille de papier ouverte, commençant par ces mots. Par le contrat, et finissant par ceux daté en son principe du vingt du present mois de Mars, signé enfin Jean Grairer, Peter Delabegarre, Eugene Dorsiere, temoin M. F. Caroline Guillotte, la dit acte, acte, portant vente par le dit Sieur Jean Grarier, au dit sieur comparant de toutes les terres, formant batture renfermées entre le chemin, le fleuve, Madame Delord Sarpy et la ville, letout faisant front aux domains de l'habitation du dit Jean Grarier, sous les reserves expliquées au dit acte sous signature privée, le tout moyennant la somme de dix mille piastres payable en deux termes égaux, auquel acte le dit sieur comparant nous a requis le depôt en notre etude pout y avoir recours en cas de besoin ce que nous lui avons octroyé apres avoir signé et paraphe en sa presence le dit acte sous seing privée *ne varietur* dont et de tout ceéque dessus nous avons dressé le present pour servir et valoir ce que de droit. Et jugé de son consentement fait et passé en notre etude les jours et an que dessus en presence des Sieurs Jean Baptiste Ramirez et Joachim Lozano temoins a ce requis et appelés qui ont ainsi que le comparant signé en presence de nous notaire soussigné. La minute et signée Peter Delabegarre, Jean Baptiste Ramirez, Jo. Lozano, Pierre Pedesclaux, n^re.

Annexé.

Par le contrat fait le vingtième jour de Mars, mil-huit-cent-quatre entre Jean Grairer de la ville de la Nouvelle Orleans, d'une part, et Pierre Delabegarre de la ville de la Nouvelle Yorck de l'autre part, il appert qu'en consideration de la somme de dix mille piastres, payables au dit Jean Grairer aux époques suivantes, savoir, cinq mille piastres dans le cours de six mois a compter de la même date des presentes et les cinq autres mille piastres dans le cours de dix-huit mois a compter de la même date, le dit Jean Grarier a accordé vendu, et aliené et par ses presentes accorde vend et aliène au dit Pierre Delabegarre à ses heritiers ou ayant cause deux tiers indivisés de toute cette partie de terrain ou parcelle des terres situées sur la rive du fleuve de Mississippi et formant le front de la plantation du dit Jean Gravier maintenant appelé fauxbourg Ste. Marie et s'etendant depuis les limites de la ville de la Nouvelle Orleans le long du dit fleuve aussi loin que peut ou doit le faire la plantation du dit Jean Grarier, lesquelles sont bornées à l'Ouest par le grand chemin, ouroute conduisant vers le haut du dit fleuve au mer, par les limites de la dite ville au Sud par les limites de la plantation de la veuve Delord, et à l'Est par le courant du dit fleuve Mississippi, exceptant et reservant seulement une partie des terrains qui forment la de vanture de l'islet a blande François Giroc, et uue autre partie de deux terrains vendus a Pierre Fouchet toute cette partie de terrains ou parcelle de terres ainsi vendues au dit Pierre Delabegarre, contenant en front sur le dit grand chemin quarante-trois lots de soixante pieds de front plus ou moins formant cinq islets et comme les dits quarante trois lots se comportent et etendent ensemble avec toutes les appurtenances des dites terres et quelconques comme aussi tous les droits, titres, et pretensions ou demandes quelconques du dit Jean Grarier dans les deux tiers indivisés ainsi vendus, reversions residus rentes ou profits qui peuvent en resulter afin par le dit Pierre Delabegarre, ses heritiers, ou ayant cause de posseder les dits deux tiers indivisés, des dites parcelles de des heritiers ou ayant-cause plein et entiere jouissance benefices et propriété pour toujours, et le dit Jean Grairer par ces presentes s'engage personellenent ses heritiers executeurs et administrateurs et convient avec le dit Pierre Delabegarre ses heritiers ou ayant-cause de la manière et dans la forme survante: savoir, que le dit Jean Grarier est veritablement et suivant la loi seul proprietaire des dits terrains ainsi vendus et qu'il a plein pouvoir d'en disposer et-que ces mêmes terrains sont maintenant libres, nets, et dechargés de toutes espèces d'hypotheques anterieures ou demandes quelconques, et, finalement, que le dit Jean Grarier guarantira et pour toujours defendra les dites terres ainsi vendues au dit ayant cause en foi de quoi les sous-dites; et y ont apposé leurs cachets les jour et us que dessar.

(Signé) JEAN GRAIRER,
PETER DELABEGARRE.

Scellé et delivré en presence d' Eugene Dorsiere, temoins M. F. Caroline Guillotte.

Pour copies conformes à la minute et à la piece y annexée, deposés en mon étude pour recours en foi de quoi j'ai signé le present et apposé le sceau de mon office à la Nouvelle Orleans le seize Juin, mil huit-cent-trente dependances la renvoi appreuve cinq mots rayés.

LOUIS L. CAIRE, *Not. Pub.*

Signé et paraphe *ne varietur* au desir de l'acte de depôt de ce jour Nouvelle Orleans, ce vingt-septième jours de Mars de l'année mil huit-cent-quatre, le vingt-huitième l'independance Americaine après-midi.

(Signé) PIERRE PEDESCLAUX.
LOUIS S. CAIRE, *Not. Pub.*

Deed from Peter Delabegarre to Edward Livingston.

Know all men by these presents, that I, Peter Delabegarre, late of the city of New York, do, by these presents, give, grant, release, and confirm, unto

Edward Livingston, late of the city of New York, esq., and to his heirs forever, one undivided third of a parcel of land, two thirds whereof were this day conveyed to me by John Gravier, of the city of Orleans, and in his deed bearing even date with these presents, the whole of the said land is described as all those lots or parcels of land situate on the bank of the river Mississippi, and forming the front of the plantation of the said John Gravier (now called the Fauxbourg St. Marie,) and extending from the limits of the town of New Orleans along the said river as far as the plantation of the said John Gravier, can or ought to extend, bounded on the west by the highway or road leading up the said river, on the north by the limits of the said city, on the south by the limits of the habitation of the widow De Lorandon, on the east by the current of the said river Mississippi, and receiving only a parcel of the said land which lies opposite to the square of Claude Francois Griod, and two lots sold to Pierre Fouchet; the whole of the said lands sold to the said Peter Delabegarre, containing in front on the said high road, forty-three lots of sixty feet front each, more or less, forming five islets, and as far as the said forty-three lots contain and extend, together with all and singular the appurtenances to the said one undivided third part of the said land or lots of ground belonging, or in any way appertaining; to have and to hold the same undivided third part of the above described tract of land, with the appurtenances, as tenant in common, each for one equal undivided third part with me, the said Peter Delabegarre and John Gravier, to him, the said Edward Livingston, and his heirs and assigns, to his and their only proper use, benefit, and behoof, forever. In testimony whereof, I have hereunto set my hand and seal, this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and four.

(Signed) PETER DELABEGARRE. [SEAL.]

Sealed and delivered in the presence of

JOHN THIBAUT.

Be it remembered that, on this 5th day of February, A. D. 1807, before me, Eliphalet Fitch, one of the notaries public of the territory of Orleans, residing in the city of New Orleans, personally appeared John Thibaut, to me well known, who, being duly sworn, doth depose and say, that he did see Peter Delabegarre, the grantor named in the foregoing deed, sign, seal, and deliver the same on the day the same bears date; and that the same, John Thibaut, signed thereto as a witness, is in the proper hand-writing of him the said deponent. Whereof I, the said notary, at the request of Edward Livingston, the grantee within named, have registered the said deed.

(Signed) JOHN THIBAUT.

I, Carlile Pollock, a notary public in and for the city of New Orleans, duly commissioned, do hereby certify the foregoing to be a true copy of an act on the records of Eliphalet Fitch, late a notary public in this city, deceased, said records deposited in my office. In faith whereof, I grant these presents under my signature and seal of office, at New Orleans, this 18th June, one thousand eight hundred and thirty.

CARLILE POLLOCK.

Partition between Edward Livingston and trustees of Delabegarre.

Par devant nous John Lynd dûment autorisé et commissioné notaire public, pour la ville et paroisse de la Nouvelle Orleans, second district senatorial de l' Etat de la Louisiane, et en presence des temoins ci-apres nominés et sous signé. Est comparu Mr. Edward Livingston, avocat demeurant en cette ville. Lequel a requis de nous, notaire, la transcription sur le registre courrant, des minutes, de notre office d'un accord sous seing privè écrit sur une feuille entiére et remplissant les quartre pages daté du quatorze août mil-huit-cent-sept, et passé entre lui dit requerant et les executeurs testamentaires du feu Pierre Delabegarre a laquelle requisition nous dit notaire obtemperant avons transcript fidèlement le dit accord comme suit.

"*Articles of agreement, sale, and partition between Edward Livingston of the one part, and Blaise Cenas Barthelemy Lafon and Lairriere Latour, trustees under the will of Peter Delabegarre, deceased, of the other parts.*"

Whereas, Daniel Clarke, Nicholas Girod, and Hypolite Ladotte, referees mutually chosen between the parties to these presents, to appraise the relative value of certain parcels of land called the batture, in front of the suburb St. Mary, held in common between said parties, have made a certain report, dated the day of August, instant, which we, the said parties, have agreed shall serve as a basis for the partition of the said property; and whereas block number three, mentioned in said partition, consisting of twenty-four lots, and the space between them and the river to the water's edge, at the channel of the river, colored red on the map made for the said estimation, has, by mutual consent, been assigned to the said Edward Livingston, charged with the payment of six thousand one hundred and sixty-nine dollars, payable at the periods at which the instalments on a bond or obligation made by the said Peter Delabegarre to John Gravier for the consideration money of the said lands shall fall due respectively. And whereas, by the last will and testament of the said Peter Delabegarre the said trustees are empowered not only to make partitions of the said land, but to sell so much thereof as may be necessary to pay the incumbrance and necessary expenses, and to secure the title thereof. And whereas, the said land is encumbered to John Gravier for the sum of fifteen thousand dollars, of which four thousand only are to be paid by the said Edward Livingston, pursuant to his agreement with the said Peter Delabegarre, deceased, dated the day of in the year one thousand eight hundred and four. And whereas two lots of land of sixty feet front and one hundred and twenty feet depth, each fronting on the present road, are by agreement to be conveyed James Brown and Abner L. Duncan, respectively, and the sum of one thousand dollars is to be paid to Lewis Kerr, esq., all three counsellors employed in prosecuting the claim of the said John Gravier to the said property. And whereas *sundry expenses have been incurred, and others will unavoidably accrue to secure the title and possession of the said property*. Now, therefore, the said trustees pursuant to the power vested in them by the said will, have agreed to sell, and do hereby grant, bargain, sell, convey, and make over to the said Edward Livingston, his heirs and assigns forever, all that part of the said batture which lies between the ancient limits of the town, and the said block number three, which begins opposite to the house of Julien Poydras, and they do hereby, in pursuance of the partition aforesaid, release, quit claim, and assign to the said Edward Livingston, his heirs and assigns forever, all that part lying and being between block number two, and the block conveyed to the said Edward Livingston by John Gravier, lying between Girod and Julie street, so that the said Edward Livingston, by virtue of this sale and release may enjoy, as his separate property, to him and his heirs, of all that part of the said batture so held in common between him and the said Peter Delabegarre, which is bounded on the one side by the ancient limits of the city of New Orleans, on the second side by the street or highway in front of the said suburb St. Mary, on the third side by the land or block heretofore sold to the said Edward Livingston by the said John Gravier, lying between Girod and Julie street, and on the fourth side by the bed or channel of the Mississippi river. And the said Edward Livingston hath agreed to release, and does hereby release, quit claim, and assign to the said trustees, all his right, title, and interest, to the blocks numbered on the map aforesaid, with numbers four, five, and six, the part opposite thereto on the said map, colored red, between them and the river, being reserved for the further division, to hold the said blocks or squares subject to the trusts contained in the said will The said sales, and whereas, being made on the following considerations and terms, to wit, on the part of the said Edward Livingston: 1st. That he shall pay to the said John Gravier the whole of the said sum of fifty thousand dollars at the several periods stipulated in the sale of the said Peter Delabegarre. 2d. That the said Edward Livingston shall exonerate, and doth hereby forever discharge, the estate of the said Peter Delabegarre of and from all demands for and on account of his professed personal services in the said suit in the Supreme Court aforesaid. 3d. That the said Edward Livingston shall pay to the said Lewis Kerr the sum of one thousand dollars, so due to him as aforesaid. 4th. And finally, that the said Edward Livingston shall pay, in final discharge of all sums due to the estate of the said Peter Delabegarre, on account of said joint property, the sum of eleven thousand dollars, in manner following, that is to say, one third in one month, one third in three months, and one third in six months, from this date. And on the part of the said trustees, that they will convey to the said James Brown and Abner L. Duncan, the said two lots of land respectively out of their proportions of the said batture. In witness whereof, the said parties have hereunto set their hand and seals, this 14th day of August, A. D. 1807, made by triplicates, one copy to be deposited with the clerk of the city court, and one copy to be kept by each of the said parties.

(Signed) EDWARD LIVINGSTON. [HIS SEAL.]
B. CENAS. [HIS SEAL.]
LAFON. [HIS SEAL.]
A. LAIRRIERE LATOUR. [HIS SEAL.]

Sealed and delivered in the presence of

JH. PILIE,
A. TROUARD.

Des quel enregistrement et transcription le Sieur comparant a requis acte a lui octroyé pour servir ce que de droit. Et il a retiré l'original fait et passé à la Nouvelle Orleans. En l'etude, le vingt-septième jour d'Avril de l'année mil-huit-cent dix-huit, la guarante dixième de l'independanceAmericaine. En presence de Messrs. Hugh K. Gordon et Jules Devezac, tous deux temoins domiciliés en cette ville qui ont ainsi que le requerant signé, avec nous, notaire, lecture faite.

(Signé) EDWARD LIVINGSTON,
JULES DAVEZAC,
HU. K. GORDON.

JOHN LYND, *N. Pub.*

I do hereby certify the foregoing to be a true copy of the original extant in my office. In faith whereof, I hereunto set my hand, and affix my seal of office, on this 14th day of December, A. D. 1830.

G. R. STRINGER, *Not. Pub.*

Know all men by these presents, that I, Richard Reynall Keene, of the city of New Orleans, for and in consideration of a tract of land in the English turn, on the New Orleans side of the Mississippi, consisting of five acres front on said river by the usual depth, being part of the old fort land, do by these presents sell and transfer unto James Brown and Samuel Brown of the said city, the following slaves, to wit: Strap, husband of Nanny, Nanny Jenny, their daughter, and the boys Ellick, Henry, Dick, and Washington, hereby guaranty the said sale to the said James and Samuel Brown. Given under my hand, this twenty-eighth day of September, A. D. 1807.

(Signed) RICH'D REYNALL KEENE,
SAML. BROWN,
JN. BTE. RAMIREZ,
JOAQ. LOZANO.

PIERRE PEDESCLAUX, *Not.*

I certify the foregoing to be a true copy of the original act extant in my register, according to the laws and usage of this State. In faith whereof, I grant these presents under my signature, and the impress of my seal of office, at New Orleans, this 8th day of June, A. D. 1832.

LOUIS L. CAIRE, *Not. Pub.*

Correspondence, or letters, by R. R. Keene to James Brown, dated at

PARIS, *May* 13, 1824.

DEAR SIR: To avoid mixing a private subject with one (that of my passport) on which I have addressed you in your public character, I send you this note apart, merely to beg of you the favor of such a paper as would enable to establish my right and title to the lot in New Orleans, that we bargained for before I left that place. In testimony of my remembrance of our former friendship, I shall send you from the United States an exposition, the publication of which I shall cause to be made as soon as I shall arrive there; which, whilst it will prove the falsehood and malice that have been employed against me, will also contain some documents relative to an old intrigue which, as well as I recollect, was attempted to be made detrimental to yourself, as well as to many of your friends.

I remain, most respectfully,
Yr. most obed't servant,
R. R. KEENE.

James Brown, Esq., &c. &c. &c.

Paris, *rue de Richelieu d'Espagne, May* 14, 1832.

Sir: As upon reflection, particularly with your last note before me, my memory is so far refreshed as to be able to recollect that in or about 1807 I conveyed to you, in New Orleans, a tract of land in or near the English turn, about five leagues below that city on the left bank of the Mississippi, for which I was to receive as an equivalent on your part a lot of ground in the batture, the same lot that Edward Livingston, esq., was to give you for your services in his favor in the batture cause. Now, as that lot was not transferred to me when I left Louisiana on account of the embarrassed state in which the batture then was, and on account also of my expectation at that time to see you again in New Orleans, I avail myself of the casualty that has brought us together in this place, to request of you to have the goodness to subjoin to this note a statement of the purport of the one contained in the accompanying paper, whereby I may be authorized to call upon Mr. Livingston for the transfer of the lot in question, without the necessity of our having to carry on any correspondence across the Atlantic upon the subject.

I am, sir, yr. most obdt. humb. servt.
RICHD. REYNALL KEENE,
Ex-Colonel in the late Constitutional service of Spain.

To his Excellency James Brown,
Ambassador of the United States,
near his Most Christian Majesty.

Statement referred to in the foregoing letter.

The purport alluded to in the accompanying letter, Mr. Brown, of course, making the terms to suit himself.

Edward Livingston, esq., of New Orleans, or his representative, as requested in the foregoing note, will transfer, or cause to be transferred, to (naming K.), or his representative, the lot referred to in said note, in virtue of the consideration therein mentioned.

May 15, 1824.

Dr. Sir: In looking over your note of this morning a second time, I see what I overlooked in the hasty reading I gave it on receiving it, to wit: that at the time of our agreement, or before you left New Orleans, you told *Col. Davis that you had given a note to Mr. Livingston to substitute me for yourself as the owner of the batture lot*—the same that forms the subject of our correspondence. Now, if that note should have been mislaid by Mr. Livingston, (which is by no means an unlikely thing) what redress shall I have in calling on him for a conveyance of that lot? Why, I must write from Louisiana to Paris to get a duplicate of it from you. But now that I am in the same place with you, is it not reasonable for me to expect of you such a duplicate? Great inconvenience may be prevented by it, and no evil can arise from it. Like a bill of exchange, a hundred sets may be given of it without any injury to any person. You can easily state in this duplicate that it is given to *have effect only in case the original has not been made operative*. But as our lives are all uncertain, I do conceive that in this duplicate you ought to mention your receipt already of the equivalent, *for it may very well appear in the deed I gave you at Pedesclaux's for the ground at the E. turn, that no mention whatever is made* of the batture lot *(although you and myself well know that this was the consideration to be given to me,)* but only *a valuable consideration of a dollar, without any other specification whatever*. This is an event highly probable. I knew that you would never take any advantage of this default; but in the supposition of your decease, what might not your heirs or executors do in utter ignorance of the previous circumstances? No person knows better than yourself what accidents and even disasters have arisen from want of caution in contracts, or rather the omiting to carry these into effect according to the bona fide intentions of the original parties concerned. It appears, therefore, so reasonable that you should give me the duplicate order to Livingston under the instructions, or with the proviso mentioned, that you must excuse me for insisting, as I do most decidedly, upon having it before I leave Paris, which is as likely to be within a day or two as within a week or two. No injury, I repeat, can possibly result to you in *in* giving it, whilst much might accrue to me for the want of it. As to Davis, he can possibly have no claim on you, and as to myself, I certainly feel assured that he has none on me. Since the morning I have reflected more on the part relating to him than I have done for the last thirteen years, and have recalled to mind the following circumstances: In the latter part of 1807, or about August or September, when I was about to go for Ellen to the northward, Davis and myself conversed about an exchange of the batture lot for, as I understood, a small *sugar*, and not a cotton, plantation (as I erroneously mentioned this morning) below Jentilly's; and, under this impression, a deed of exchange was made out at Pedesclaux's with the express mention of a *sugar* plantation, or rather a deed of conveyance to me from Davis, of such a plantation; but, Davis never executed it. In the same period I satisfied Thos. Elmis of my being about to render a signal service to the capt. general of Cuba in respect of a power with which Spain was then at war, and of the consequent facility I should have to sell in the Havana a cargo of Kentucky tobacco, provided it was of the best quality. He professed to sell such, asking for it $6 per cwt., whilst the common price was about $4 or 4½. I gave him a lien upon the cargo, and also made over to him, as collateral security, some property in Louisiana, among which was mentioned the *sugar* plantation of Davis, for the deed for conveying it to me was already before made out, and I had Davis's promise to sign it. I went to the Havana—the tobacco, through great favor, was received into the royal factory for purchase, the lowest price for prime Kentucky tobacco being $14 per cwt. in cash; but, instead of prime tobacco, the far greater part of it turned out to be *trash*, and as such *was condemned and burnt*. In 1811, when I returned from Spain to the Havana, an agent, Benj. Chardon, of Cork, Ellis and Shaw of New York, to whom Elmas had transferred his claim on me, presented against me a demand for $18,000, on acconnt of that claim, as Chardon carried out letters of introduction to all the American merchants in the Havana I empowered him to appoint any three of them he should like best as arbitrators, to decide upon his claim, and upon my counter-claim. He did so; naming Mr. Murdock of Philadelphia, Mr. Garner of New York, and Mr. Lunge of Boston, all gentlemen and merchants of the highest respectability. Chardon and myself bound ourselves, under the penalty of $20,000, to abide by the award. An award was given to me, or in my favor, for $1,350, and paid by Chardon. In the discussion of the case a judicial document appeared among the papers, furnished by Elmes from New Orleans, setting forth that Captain *Samuel Davis had never conveyed to me any plantation at all in Louisiana, nor had he any sugar plantation in the place described.* The truth must have been, that Davis, when he went to sign the deed of exchange of our respective properties, saw that he could not, nor ought not, to sign any such deed, as not possessing the property (the original *sugar* plantation described in that deed to be *sold by him.* Thus there fell to the ground the talked of exchange between Davis and myself, and since the date of the fore-mentioned document sent to the Havana by Elmes, I certainly have had no sort of communication whatever with Davis; so that he can possibly have no claim on me for the lot in question.

I am, most respectfully,
Your obd't humble servant,
R. R KEENE.

James Brown, Esq. &c.

Paris, *May* 15, 1824.

Dr. Sir: As my object, as already mentioned, was merely to show my right from you, to be your substitute for receiving the conveyance from or through Mr. Livingston, of N. Orleans of the lot in the Batture of that city, which he promised to you for an equivalent for your services in the batture cause; and as the equivalent given you by me I considered, and still consider, as an essential circumstance or fact, that ought to be acknowledged by you for enabling me to receive the conveyance in question; and as that equivalent consisted of a tract of land in the English turn, near N. Orleans, over which you must have exercised dominion or ownership, I could therefore, wish—though I am really sorry to trouble you—that you will do me the favor of having received the equivalent as stated: I recollect well to have arranged, in conversation with Mr. Davis, about an exchange of the forementioned lot for a cotton plantation (a very small one I believe) below the E. turn; but as I left N. Orleans before the exchange was effected, and as in fact Davis held back on account of the violent possession immediately threatened was taken of the batture by Mr. Jefferson's order, I have ever considered that the aforesaid conversation between Davis and myself, *though his own act,* fell to the ground, and was left without force.

I am, sir, very respectfully,
Yr. most obdt. hum. servant,
R. R. KEENE.

Jas. Brown, &c. &c. &c.

Paris, *May* 17, 1824.

Dr. Sir: Your last note I conceive to be such as will answer; my main purpose is already explained. I certainly have no hesitation in acknowledging that your responsibility about the Batture lot does not extend beyond your substituting me for yourself in respect of the conveyance to be made by Mr. Livingston in the sense explained by you. Now, having arrived at the satisfactory close of this business, I rely on your goodness for submitting to your inspection the accompanying certificate of General Quiroga, which shows the spoliation I sustained of $19,500 dolls. in the cause of the S. constitution, without any indemnity whatever—a spoliation that has caused me to be placed here in a foreign country without the means absolutely of going on to Bordeaux, much less to the Havana, where I have some friends. If then you would do me this signal favor to lend me two hundred dollars, to enable me to get on to the Havana, I will most assuredly refund it to you from that place in any manner you may now direct, and be persuaded *the favor will not be thrown away.* I will, at the same time, tender my separate obligation, endorse to you a promissory note of Mr. Hackley of New York, or Richmond, (the brother in-law of T. M. Randolph,) formerly American consul in Spain, for three hundred dollars, as an additional security for your reimbursement.

I am, very respectfully,
Yr. most obedt. hum. servt.,
R. R. KEENE.

Jas. Brown, Esq., &c. &c. &c.

P. S. As my letter of Saturday evening last might hereafter, by possibility, fall into other hands than your own, I would just remark that the favor I rendered the captain general of Cuba, in 1807, that obtained for me the entry and sale in the royal factory of the Havana, of New Orleans tobacco, was the carrying from New Orleans to the Havana a relation of his whom he desired much to have with him, and whom no merchant in New Orleans would suffer to give his vessel, for fear of its being discovered by the English.

Mr. Brown presents his respects to Col. Keene, and returns him his passport, which is invested with all the forms necessary to its validity. The impropriety of issuing an American passport to one who at the same time holds the paper you sent, must be obvious on a moment's reflection, and the proposal to send one to Bordeaux is utterly inadmissible. Col. Keene will find the contract between himself and Mr. Brown in the office of Pedesclaux at New Orleans. It was drawn up, I think, by Lozano, who I believe yet resides there.

Paris, *May* 13, 1824.

Answer of James Brown, filed 13*th Dec.*, 1830, *to the petition of R. R. Keene, same subject matter; in which suit a non-suit was entered.*

To the honorable the judge of the district court of the United States for the eastern district of Louisiana, the answer of James Brown to the petition of Richard Reynall Keene respectfully showeth: That your respondent is not liable to convey to the petitioner a lot of ground as stated in his petition. Your respondent alleges that Edward Livingston and Peter Delabegarre having acquired an interest in the batture, employed your respondent as their counsel in prosecuting the suit of John Gravier against the Corporation of New Orleans, before the late superior court of the territory of Orleans, for the batture; and, in consideration of his professional services on the successful termination of said suit, agreed to give a lot of ground on the batture measuring sixty feet front on Tchefetoulas street, by one hundred and twenty feet in depth, as appears by the act hereunto annexed. Your respondent alleges that, by the act referred to in the plaintiff's petition, he transferred to him his right to said lot, and nothing more. That he gave no guarantee to the plaintiff, who was perfectly acquainted with the nature of your respondent's claim: your respondent denies that the right to said property has been lost, and, if the same has been lost, it has been entirely through the neglect and absence of the plaintiff, and your respondent is in no manner liable him; and for trial puts himself on the country. Wherefore, your respondent prays judgment in his favor. As in duty bound, &c.

MAZEREAU & PRESTON,
Attys. for the deft.

UNITED STATES' DISTRICT COURT, *Wednesday, June* 27, 1832.

The court met pursuant to adjournment. Present, Hon. Saml. H. Harper.

RICHARD REYNALL KEENE,
vs.
JAMES BROWN.

The court having first considered the pleas to the jurisdiction in this case, doth now overrule the same. And on the same day, to wit, on the 27th day of June, 1832, the following decree was entered upon the records of the said court, to wit:

COURT OF THE UNITED STATES, *Wednesday, June* 27, 1832.

The court met pursuant to adjournment. Present, Hon. Saml. H. Harper.

RICHARD REYNALL KEENE, *Plaintiff,*
against
JAMES BROWN, *Defendant.*

The court having considered this case upon its merits, doth now adjudge, order, and decree, that the plaintiff do recover from the defendant the sum of two thousand dollars, with damages equal to interest thereon at the rate of six per centum per annum from the 28th day of September, 1807, until paid, and the costs of this suit.

SAML. H. HARPER, *Judge U. S.*

Judgment signed 5th July, 1832.

B. WALLER, *D. C.*

The following are the bills of exceptions signed by the court agreeably to the prayer of the defendant, to wit:

RICHARD REYNALL KEENE, *Plaintiff,*
against
JAMES BROWN, *Defendant.*

This cause having been called for trial, the defendant offered in evidence the records annexed, marked A and B, to support the allegation in his petition, that the plaintiff was a citizen of Louisiana; and also offered parol evidence in support of said allegation. The court rejected all said evidence, on the ground that the rule of court made the 20th March, 1830, disallowed any denial of the allegation of citizenship made in the petition, unless verified by affidavit filed therewith by the counsel, agent, or party, as to their belief of the truth thereof To which opinion of the court, the counsel of defendant excepted, and prayed the court to sign his bill of exceptions, which is done. June, 1832.

SAML. H. HARPER, *Judge U. S.*

R. R. KEENE,
vs.
JAMES BROWN.

On the second plea to the jurisdiction of the court in this case, the defendant proved, by Samuel Morgan and William Kelly, that Dr. Saml. Brown had established a cotton plantation near Huntsville, in the State of Alabama, ten or twelve years ago; he was considered a citizen of that State; he was four years a professor in Kentucky, and resided there; lived on his plantation about eighteen months before his death, and left children, one of whom is in Philadelphia, the other travelling. That the State of Alabama is considered their home. The son visits Louisiana sometimes. The court overruled the plea to the jurisdiction of the court: to which opinion of the court the defendant excepted, and prayed the court to sign his bill of exceptions, which is done.

SAMUEL H. HARPER, *Judge U. S.*

And afterwards, to wit, on the 29th day of June, 1832, the following entry was made in the said cause upon the minutes of the said court, viz.

NEW ORLEANS, *Friday, June* 29, 1832.

Special court. Present, Hon. Saml. H. Harper.

R. R. KEENE,
vs.
JAMES BROWN.

On this day the defendant, by his counsel, and with the consent of the plaintiff, moved the court to grant a new trial upon the grounds contained in a statement there filed, which was submitted to the court for decision.

Grounds for new trial above referred to, filed 29th June, 1832.

DISTRICT COURT OF THE UNITED STATES, *Eastern District of Louisiana.*

RICHARD R. KEENE,
vs.
JAMES BROWN.

In this case the defendant, by his counsel, prays for a new trial, on the grounds: 1st. That the written evidence on file, and which is all the evidence offered on the trial, except the parol testimony of D. T. Walden as to the value of Batture lots at different periods; and that of Samuel P. Moore, which is incorporated in a bill of exceptions, does not, in law, entitle the plaintiff to the judgment he has obtained.

2d. The judgment is given for two thousand dollars damages, with interest, although the laws of Louisiana do not allow interest upon damages. Code of Practice, article 554.

3d Interest is allowed at the rate of six per centum per annum, although the laws of Louisiana allow but five per cent. interest per annum. Civil Code, art. 2895.

4th. The judgment allows interest from the year 1807, although interest is prescribed by law by the lapse of five years, and prescription was expressly plead against the plaintiff's demand. Old Civil Code, page 488, art. 78; New Code, art. 3503, 3505.

5th. If the interest allowed be allowed in the nature of damages, it is not due by the laws of Louisiana, except from the time the defendant was formally put in default. Civil Code, art. 1927.

Wherefore, the defendant prays that the judgment rendered may be set aside, and a new trial granted: as in duty bound, &c.

ISAAC T. PRESTON,
of Counsel for the Deft.

And afterwards, to wit, on the 30th day of June, 1832, the following entry was made upon the minutes of the said court in the said cause, viz.

UNITED STATES DISTRICT COURT, *Saturday, June* 30, 1832.

The court met pursuant to adjournment. Present, Hon. Saml. H. Harper.

RICHD. R. KEENE,
vs. No. 3128.
JAMES BROWN.

The court having considered the motion for a new trial in this case upon the grounds filed, doth now order that the same be overruled.

The following is the opinion of his honor Saml. H. Harper, filed upon the application of the parties among the other papers of the said cause, read at the time of the rendition of the foregoing final judgment, to wit:

RICHARD REYNALL KEENE,
vs.
JAMES BROWN.

Neither party in this case having prayed for a trial by jury, it is submitted to the court for decision according to the practice in Louisiana in such cases. The plaintiff has brought this suit to recover of the defendant a lot of ground of sixty feet, by one hundred and twenty feet in depth, in that part of the city of New Orleans called the Batture, or the price or value of said lot at the time suit was brought. His claim is founded on the following notarial instrument, bearing date 21st August, 1807. (See marked C.) To this action the defendant pleads, 1st. That this court has no jurisdiction of this cause, the plaintiff, as well as the defendant, being a citizen of Louisiana. 2d. That the heirs of Saml. Brown are equally and jointly interested in the defence of tihs suit, and not being citizens of Louisiana, this court cannot exercise jurisdiction over them. 3d. The defendant denies that he ever contracted any obligation to convey to the plaintiff a lot on the Batture. 4th. That the defendant had acquired a right to a lot on the Batture for professional services, as a lawyer, rendered to Edward Livingston and Peter Delabegarre in a suit of John Gravier vs. the Corporation of New Orleans, under whom the said Livingston and Delabegarre claimed the batture by purchase. That it was the right which the defendant exchanged with the plaintiff for his right to a tract of land at the English turn; and that it was in the power of the plaintiff to have reduced this right to possession, which he neglected to do. 5th. That the demand against the defendant for the lot, or its value, is prescribed by law. 6th. That the defendant can only be made liable for one fourth of the value of said lot, and that such value must be estimated at the time of the contract in 1807, with interest only from the time of the judicial demand or commencement of this suit. As to the first plea, the plaintiff contended that it was *res judicate*, it having been determined by a jury, a few days before, that he was not a citizen of Louisiana; but that was a suit not between the same parties, the defendant being a different person from the one now before the court. A rule of this court made of the 20th March, 1830, declares that "no denial of the allegation of citizenship made in a petition, nor any dilatory exceptions or plea in abatement involving matters of fact, shall be allowed, unless verified by *affidavit* filed therewith by the counsel, agent, or party, as to their belief of the truth thereof." This rule was made to prevent those injurious delays to which a looser practice had given rise, and the defendant, not having complied with this rule, and the jurisdiction appearing *prima facie* upon the record, the plea was overruled. The second plea to the jurisdiction was overruled on the ground that the heirs of Samuel Brown were not made parties to the suit, and because the plaintiff was not bound to make them parties, he having the right to proceed against his obligors jointly or severally at his option; although Samuel Brown was connected with the defendant in the purchase of the tract of land at the English turn, he does not appear to have had any interest in the batture lot. That lot, the defendant acknowledges, was his own, given as the reward of his professional services. But were it otherwise in a case of this kind, each would be bound for the whole. The Civil Code, article 2104, says an obligation is divisible or indivisible, according as it has for its *object* either a thing which, in its *delivery*, or a fact which, in its *execution*, is or is not susceptible of division. And, again: the obligation is indivisible if the light in which it is considered in the obligation does not admit of its being partially executed. "Every one of those who have conjointly contracted an indivisible debt is liable for the whole." Civil Code, art. 2109. A lot of ground, in its nature cannot be delivered in parts; therefore, if it be competent for a party to sue one of many who have jointly bound themselves to deliver a lot, and if a specific performance cannot be made, will not the same principle compel that *one* to pay its equivalent in money? I shall now discuss the pleas to the merits of this case. The first of them denies that the defendant was ever bound to convey to the plaintiff a lot on the Batture. The notarial act before recited, I think, is conclusive on this point. It shows that an exchange of a Batture lot by the party defendant was made for a tract of land then owned by the plaintiff; and it is in evidence that the defendant acquired dominion over that tract of land which he afterwards re-sold to the plaintiff. If, then, the defendant was not bound to convey to the plaintiff a title to the batture lot, he received the tract of land without any valuable consideration, which can not be presumed to have been the meaning of the parties. But the plaintiff contends that, as Mr. Brown, the defendant, was not in possession of the lot, and as Livingston and the trustees of Delabegarre had stipulated to transfer it to Brown for his professional services, that they became his substitutes to convey the title to the plaintiff; and that he sold what his counsel call an incorporeal right to the plaintiff, and that, too, without warranty. It is true, a private agreement between these parties, dated about a week before the exchange of the lot for the tract of land, took place between the plaintiff and defendant, stipulates that the trustees of Delabegarre should convey to the defendant a lot on the Batture; but this being a private instrument, its contents are not presumed to have been known to the plaintiff. He was no party to it, and it was never made public by registry until the 27th August, 1818. If the trustees of Delabegarre were bound to convey a lot to the defendant, and if he afterwards exchanged that lot with the plaintiff for a tract of land, it appears to me the legal course would have been to have compelled the trustees to make the conveyance to him, and then to have transferred the title to the plaintiff. The notarial act of the plaintiff and defendant speaks of *a lot* to be given in consideration of the tract of land, not of *a right* to a lot. The parties to this contract must be viewed as mutual vendors and vendees, and therefore the provision of the article 2449 of our Civil Code applies to this case, which is, that the seller is bound to explain himself clearly respecting the extent of his obligations: any obscure or ambiguous clause is construed against him. “If, therefore, the defendant only meant to convey an incorporeal *right* to the plaintiff, he ought to have expressed himself. The defendant having sold a lot to the plaintiff, was bound to warrant the title to it. Warranty results of right from a sale. Civil Code, 2479. And again, Civil Code, art. 2450, the seller is bound to two principal obligations: that of *delivering*, and that of *warranting* the thing which he sells.” But it was said in argument that the defendant, having sold his right to the lot to the plaintiff, could not afterwards sue for and recover the possession. The same argument would apply in a case when one sells to another property which does not belong to him. In both instances, he would be liable for the value of the thing sold, unless he had expressly stipulated that he sold only his right to the thing, and had “clearly explained,” in the words of the law—“the extent of his obligation.” Such stipulation and explanation are not to be found in the instrument on which this suit is brought; neither does it substitute any one in place of the defendant, to transfer the property to the plaintiff. The collateral evidence adduced to show how the title to the defendant was derived through Gravier, Livingston, and Delabegarre, has no relation to the plaintiff. He never agreed to accept any of them as the substitute of the defendant. The law of Louisiana, C. C. arts. 2188 and 2190 is, “that the delegation by which a debtor gives to the creditor another debtor who obliges himself towards such creditor, does not operate a novation, unless the creditor has expressly declared that he intends to discharge his debtor who has made the delegation. The mere indication made by a debtor of a person who is to pay in his place, does not operate a novation.” In this case, the plaintiff did not expressly declare that he intended to discharge the defendant, and if the defendant indicated another as the person to fulfil his engagements, yet, without the express assent of the plaintiff, he is not bound by it. It is true, the correspondence carried on in Paris between these parties in 1824, shows that the plaintiff took from the defendant an order on Mr. Livingston to transfer the lot to him, but it also shows that the plaintiff, after so great a lapse of time, and at so great distance from New Orleans, did not recollect the circumstance of the notarial act between him and the defendant, who there reminded him of it, and gave him to *understand* that Mr.

Livingston, and not he, by that instrument, was bound to make him the transfer. On that supposition the plaintiff acted; but when he arrived in this city, and had access to the instrument to which he had been referred, he found no such stipulation had been made. His acceptance, therefore, of Mr. Livingston as the substitute of the defendant in this matter, made under the circumstances it was, ought neither in law or equity to be construed as a voluntary discharge of the original obligor. The plea of prescription not being insisted on in argument, is presumed to have been waived, probably for the reason that the prescription was interrupted in 1824 by the defendant's acknowledgment of the plaintiff's right to a lot on the batture; and although the defendant did not then admit that he was bound to make the transfer, but that Livingston was, yet I think his admissions on the subject are sufficient to destroy the plea of prescription. Such being my views of the whole case, it now remains for me to act the part of a jury, and assess the damages due to the plaintiff, in consequence of the defendant having failed to fulfil his contract. The plaintiff insists that, as the defendant cannot now give him the specific lot mentioned in the contract, he is bound to pay him the present value of a lot of equal dimensions, situated on the Batture; while the defendant contends that he cannot be bound beyond the value of the lot at the date of the contract, with interest. The plaintiff, on the trial, produced Danl. T. Walden as a witness to ascertain the value of such lots at the present time. The witness was of opinion that the best lot on the batture 60 by 120 feet, is worth from $40 to $45,000, and that the least valuable is worth $10,000. The medium value, then, would be from $25 to $27,500, which the plaintiff declared he was willing to accept. He also introduced Saml. P. Moore as a witness, who swore that he heard the defendant declare, shortly after his exchange with the plaintiff, that he had sold the land at the English Turn for $8,000. To rebut this evidence, the defendant produced a notarial act executed by the plaintiff on the 28th Sept. 1807, by which it appears he took back from the defendant and his brother the tract of land at the English turn, for which he gave them seven slaves. This last, I think, is better evidence of the real value of the land than the loose, and perhaps vain declaration of the defendant, as stated by the witness Moore. I agree with the counsel for the defendant that, according to the course of the common law, the rule of compensation should be the consideration which was paid with legal interest, and not the instance value of the lot, or, in an opposite case, its depreciated value." The rule, however, in this State, seems to be different, that is to say, the *general rule*, to which I think this case ought to form an exception, for the following reasons: If the lot ever had been, or could be, precisely designated, its value could be clearly ascertained; but whether the spot contemplated by the parties at the time is *terra firma*, or submerged by the change of the course of the river, cannot now be determined: besides, it is a matter of history that the Batture property was the subject of a series of suits after the first decisions in the case of Gravier vs. the Corporation. The United States claimed it, and President Jefferson dispossessed Mr. Livingston, who afterwards regained possession of it. The heirs of Gravier in France recovered a portion of it; then the front proprietors obtained, by compromise, another portion of it; and, lastly, certain pretensions, of the city Corporation were brought off, so that great losses and expenses were incurred previous to the final settlement of the question, and, of course, the lot in dispute made part of the property in litigation. If, therefore, the plaintiff had reduced it to possession at the time of the contract, and, in order to save it, had participated in all the suits which were brought on the subject, it would have been of little value at the termination. By the terms of the contract, it is very questionable whether, after having put the plaintiff in possession of the lot (if he had done so,) the defendant would have been bound to defend the title against the whole world, and, if not, the expense of defending it would have fallen on the plaintiff. Added to all this, he might have compelled the defendant to put him in possession immediately after the exchange was made. For all these reasons, I think he is not entitled to the suppositious value, at this time, of a piece of land which cannot be designated, yet, as it was once susceptible of identification, and as he gave a *valuable consideration* for it, he is entitled to that amount, with interest upon it. And here, again, I am obliged to discharge the duty of a jury, and ascertain as near as I can what was the amount of that consideration. I adopt the value of the slaves given by the plaintiff to the defendant for the plantation at the English turn, as the criterion of the consideration. From their descriptions, they appear to have been a family consisting of a man and woman and five children. From my own knowledge of the relative value of slaves in this country about the time of this transaction, I am of opinion that this family were not worth more than $2,000. To this sum, I think the plaintiff is entitled, with damages thereon, equal to interest at the rate of six per centum per annum from the date of the transfer of the slaves to the defendant. It is therefore ordered, adjudged, and decreed, that the plaintiff recover from the defendant the sum of $2,000, with damages thereon equal to interest at the rate of six per centum per annum, from the 28th day of September, 1807, until paid, and costs of suit.

And afterwards, to wit, on the 30th day of June, 1832, and after the rendition of the foregoing decree before the said court, came the plaintiff, Richard R. Keene, in propria persona, and filed the following petition, to wit:

To the Hon. Judge of the District Court of the United States for the Eastern District of Louisiana:

The petition of Richard Raynal Keene, respectfully showeth, that the petitioner conceiving that the judgment given by this honorable court, June 27th, 1832, in the suit in which he is plaintiff, and James Brown is defendant, involves error, inasmuch as the said judgment neither assigns to him the lot mentioned in said suit, nor its value at the commencement thereof; therefore, he, the petitioner, in order to the re-examination and reversal of said judgment in the matter aforesaid by the Supreme Court of the United States, prays for the allowance of a writ of error.

RICHD. RAYNAL KEENE, *P. P.*

The foregoing petition having been presented to the honorable the judge of said court, the following is the order made thereon, agreeably to the prayer contained in its conclusion, viz.

Be it so, on the appellant giving bond in the sum of five hundred dollars, conditioned according to law, with W. T. C Duplesses as his security.

SAMUEL H. HARPER, *Judge U. S.*

Statement of facts agreed upon, signed, and filed by the parties, July 10th, 1832.

RICHARD RAYNAL KEENE,
vs.
JAMES BROWN.
} *U. S. D. C. E. District of Louisiana.*

The testimony of D. T. Walden proves that a lot of the dimensions of sixty feet front and one hundred and twenty feet deep, in the New Orleans batture, commonly called Gravier batture, at a *minimum* price, is, or was in the month of May, 1832, worth the sum of ten thousand dollars, whilst the *maximum* price of a lot of the same dimensions in the same batture, at the period aforesaid, would amount to the sum of from forty to forty-five thousand dollars; and in the years of 1825, 1827, batture property had been bought at a much lower price on account of certain conflicting titles or claims—said reduced prices being *being* from one to two thousand dollars. The testimony of S. P. Moore proves that the *the* said James Brown declared in his presence, in the year 1807, that he, the said James Brown, had derived a benefit amounting to the sum of eight thousand dollars, from the property which he received from the said Keene in exchange for a batture lot. It is admitted that the dimensions above stated, to wit, sixty feet front and one hundred and twenty feet deep, constituted, according to the customary sense, one full or entire lot. It is also admitted that the said Keene ceased to reside in Louisiana in 1807; that he returned to New Orleans in the beginning of 1830, left in July of the same year, and returned again in March, 1832. This statement, including the documents on file, and the answer of the said defendant in 1830, shall be considered as containing all the facts of the case.

(Signed) RICHD. RAYNALL KEENE, *P. P.*
ISAAC T. PRESTON,
Attorney for the Defendant.

EASTERN DISTRICT OF LOUISIANA, *s. s.*

I, Byrd B. Waller, deputy clerk of the district court of the United States for the eastern district of Louisiana, do hereby certify that the foregoing forty-three pages contain a true and faithful transcript of the records and process, together with all things relating thereunto, in the case wherein Richard Raynal Keene is plaintiff, and James Brown is defendant in said court, as fully as the same now remains on record in said court.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court at the city of New Orleans, this 20th day of July, in the year of our Lord one thousand eight hundred and thirty-two, and in the 57th year of the independence of the United States.

[L. S.]

BYRD B. WALLER,
Dep. Clk. of the Eastern Dist. of Louisiana.

UNITED STATES OF AMERICA:

I, Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana, do hereby certify that Byrd B. Waller, who has certified the foregoing transcript, is now, and was at the time of his so doing, deputy clerk of the district court of the United States for the eastern district of Louisiana, and that, to his official attestations as such, full faith and credit are due; and, further, that the attestation to said transcript is in due form.

Given under my hand and seal at the city of New Orleans, this 2d day of August, 1832.

SAML. H. HARPER. [L. S.]